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William Riley
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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(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
subadmin@sos.state.tx.us

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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

THE GOVERNOR

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

Appointments

Appointments for December 11, 2003

Appointed as Judge of the 48th Judicial District Court in Tarrant County for a term until the next General Election and until his successor shall be duly elected and qualified, David Lattimore Evans for Fort Worth. Mr. Evans is replacing Judge Bob McCoy who was appointed to the 2nd Appellate District.

Appointed as Justice of the First Appellate District, Houston, for a term until the next General Election and until her successor shall be duly elected and qualified, Jane Nenninger Bland of Houston. Judge Bland is replacing Justice Adele Hedges who was appointed to be Chief Justice of the 14th Appellate District.

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2009, William H. Fleming, III, M.D. of Houston (replacing Sharon Wilkes of Austin whose term expired).

Rick Perry, Governor

TRD-200308558

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0128

The Honorable Kenneth Armbrister

Chair, Natural Resources Committee

P.O. Box 12068

Austin, Texas 78711

Re: Responsibility and liability for maintenance of River Road in Refugio County, Texas (RQ-0068-GA)

S U M M A R Y

A commissioners court may not permanently cease to maintain a public road without formally ordering that the road be discontinued and designating an alternative route. *See* TEX.TRANSP.CODE ANN. §§ 251.001(2), 251.051(a), (c) (Vernon 1999). A county's decision as to the frequency of its maintenance of any particular county road is a matter for the discretion of the commissioners court.

Liability in tort for an accident proximately caused by the condition of a road to which the public has a right of access will depend upon the resolution of a variety of questions. These questions may include the ownership or control of the road in question, the nature of the duty owed the public in a particular instance, whether the defect alleged is a premise defect or special condition, and whether or not a particular party caused the defect in question.

Opinion No. GA-0129

The Honorable Oliver S. Kitzman

Waller County Criminal District Attorney

836 Austin Street, Suite 103

Hempstead, Texas 77445

Re: Whether the Waller County Commissioners Court must provide notice and hold a hearing under section 251.152 of the Transportation Code before authorizing the installation of stop signs on a county road (RQ-0070-GA)

S U M M A R Y

Section 251.152 of the Transportation Code requires a commissioners court to provide notice and hold a hearing before issuing a traffic regulation. An order to install stop signs on a county road constitutes a traffic regulation. The Waller County Commissioners Court must provide notice and hold a hearing under section 251.152 before authorizing the installation of stop signs on a county road. In addition, section 251.155 of the Transportation Code applies whenever a commissioners court orders the installation of stop signs or other traffic-control devices to regulate traffic. Stop signs installed by a county must conform with the Texas Department of Transportation's manual for a uniform system of traffic-control devices. *See* TEX.TRANSP. CODE ANN. §§ 251.155(b), 544.001-.002(b) (Vernon 1999).

Opinion No. GA-0130

The Honorable Norma Chavez

Chair, Committee on Border and International Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Authority of a home-rule city to permit a city council member to participate in the municipal group health insurance program (RQ-0071-GA

S U M M A R Y

A city's payment of health insurance premiums for its officers or employees is a form of compensation. The City of Pleasanton may allow city council members to participate in its health insurance program only if this action is consistent with Pleasanton's home-rule city charter provisions setting the city council members' compensation. The appropriate procedure for including council members in the program depends, in part, on the terms of the program. Subject to certain exceptions in the Internal Revenue Code, an employee's gross income does not include employer contributions to an accident or health plan. Questions of federal tax law should be directed to the Internal Revenue Service.

Opinion No. GA-0131

The Honorable Charles A. Rosenthal, Jr.

Harris County District Attorney

1201 Franklin Street, Suite 600

Houston, Texas 77002

Re: Whether a juvenile court may detain a child under section 53.02 or 54.01, Family Code, before adjudicating and disposing of a charge

of delinquent conduct, such as contempt of a justice court order (RQ-0072-GA)

S U M M A R Y

Regardless of the type of delinquent conduct with which a child is charged, the child may be detained by a juvenile court before an adjudication hearing if a factor listed in section 53.02 or 54.01 of the Family Code is present. Accordingly, a child who is charged with contempt of a justice court order may be detained by a juvenile court if detention is warranted under section 53.02 or 54.01. A juvenile court may not order a child adjudicated for contempt of a justice court order to be placed in a secure correctional facility.

To the extent Attorney General Opinion JC-0454 (2002) suggests otherwise, it is clarified. Otherwise, it is affirmed.

Opinion No. GA-0132

The Honorable Joe F. Grubbs

Ellis County and District Attorney

1201 North Highway 77, Suite B

Waxahachie, Texas 75165-5140

Re: Whether the mayor of a home-rule city is prohibited by article XVI, section 40 of the Texas Constitution or the common-law doctrine of incompatibility from serving as a county purchasing agent under section 262.0115 of the Local Government Code (RQ-0076-GA)

S U M M A R Y

Neither article XVI, section 40 of the Texas Constitution, which prohibits dual office holding, nor the common-law doctrine of incompatibility prohibits a mayor who receives no emolument from serving as a county purchasing agent employed under section 262.0115 of the Local Government Code.

For further information, please access the website at www.oag.state.tx.us. *or call the Opinion Committee at 512/463-2110.*

TRD-200308627
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: December 17, 2003

♦ ♦ ♦

Request for Opinions

RQ-0135-GA

Requestor:

Chair, Texas Lottery Commission

P.O. Box 16630

Austin, Texas 78761-6630

Re: Eligibility of a corporation for a bingo manufacturer's or distributor's license (Request No. 0135-GA)

Briefs requested by January 16, 2004

RQ-0136-GA

Requestor:

The Honorable Mike Stafford

County Attorney

Harris County

1019 Congress, 15th Floor

Houston, Texas 77002-1700

Re: Authority of a constable outside the boundaries of his precinct (Request No. 0136-GA)

Briefs requested by January 12, 2004

RQ-0137-GA

Requestor:

The Honorable Mike Krusee

Chair, Committee on Transportation

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a county may sell or lease airport land without engaging in competitive bidding (Request No. 0137-GA)

Briefs requested by January 13, 2004

RQ-0138-GA

Requestor:

The Honorable James L. Keffer

Chair, Committee on Economic Development

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Interplay between the nepotism statutes, chapter 573, Texas Government Code, and section 6.05(f) of the Tax Code (Request No. 0138-GA)

Briefs requested by January 15, 2004

RQ-0139-GA

Requestor:

The Honorable Tim Curry

Criminal District Attorney

Tarrant County

Fort Worth, Texas 76196-0201

Re: Whether the Tarrant County Hospital District may expend funds to establish a self-insurance program to cover employees of a non-profit corporation created by the district (Request No. 0139-GA)

Briefs requested by January 15, 2004

RQ-0140-GA

Requestor:

Bob Hillman, D.V.M.

Executive Director

Texas Animal Health Commission

P.O. Box 12966

Austin, Texas 78711-2966

Re: Whether the Animal Health Commission may charge a fee for reviewing and processing health certificates after completion by a private practitioner (Request No. 0140-GA)

Briefs requested by January 15, 2004

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200308601

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: December 16, 2003

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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 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

SUBCHAPTER G. SEARCH REQUESTS AND REPORTS

1 TAC §95.504

The Office of the Secretary of State proposes amendments to Chapter 95, Subchapter G, §95.504, concerning Search Requests and Reports.

The purpose of the amendments is to more accurately reflect current filing policies and procedures due to statutory requirements.

Randy Moes, Director, has determined that there will be no fiscal implications to the state or local government as a result of adopting the amendments.

Mr. Moes also has determined that the public benefit anticipated will be clarification in matters related to the submission of Uniform Commercial Code information requests with the Secretary of State. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Randy Moes, Director, Uniform Commercial Code Section, P.O. Box 13193, Austin, Texas 78711-3193.

The amendments are proposed under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.504. Search Responses.

Reports created in response to a search request shall include the following.

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

(8) Certificates.

(A) A report created by the filing officer in response to a request shall contain the following statement: "My acceptance for filing and custody of these documents in no way confirms, denies, or implies validity, legal effect, or enforceability of the attached documents."

(B) If requested, the filing officer shall, in accordance with §9.523(d), Texas Business and Commerce Code, provide information by issuance of its written certificate. The form and format of the certificate will be determined solely by the filing officer and will include an electronic signature of the filing officer and the seal of the State of Texas. The signature of the filing officer or seal of the State of Texas will not be affixed to attachments to the certificate, including any copies referenced in the certificate. In order to ensure uniformity, the filing officer is not able to alter the form and format of the certificate in response to individual requests.

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 December 11, 2003.

TRD-200308506
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 463-5701

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS

SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY

1 TAC §126.2

The Texas Building and Procurement Commission proposes an amendment to 1 TAC §126.2, concerning the terms and conditions for the disposal of surplus state property. The section establishes the methods of disposal, the proper notices of the availability of the property, state agency priority in the transfer, and the disposition of surplus or salvage data processing equipment. SB 912 enacted by the 78th Regular Session revises terms and conditions for the methods of disposal, availability, and the disposition of surplus or salvage data processing equipment.

The Commission had previously approved publication of proposed amendments to this rule that were published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7904). The previously published amendment was withdrawn by staff. No public comment was received.

The proposed amendment revises the entities to which state agencies, institutions of higher education, or eleemosynary institutions must transfer data processing equipment to include an assistance organization specified by a school district and mandates that certain agencies give preference to public schools, school districts, or an assistance organization designated by a school district before disposing of the property in another manner. The amendment alters fees and reimbursements that may be charged for transfer of state surplus data processing equipment. The amendments include several non substantive changes made to incorporate consistent editing standards.

Cindy Reed, Deputy Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal implication for the state or local governments as a result of enforcing or administering the amendment.

Ms. Reed has further determined that for each year of the first five year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be an increase in the number of public schools that receive data processing equipment previously owned by the state. There will be no effect on large, small or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the rule and there is no impact on local employment.

Comments on the proposals may be submitted to Cynthia de Roch, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to travis.langdon@tbpc.state.tx.us. Comments must be received no later than 15 days from the date of publication of the proposal to the *Texas Register*.

The amendments are proposed under the authority of the Texas Government Code, Title 10, §§2152.003, 2175.002 and 2175.061.

The following code is affected by these statutes: Government Code, Title 10, §§2175.001, 2175.128, 2175.304 and 2175.306.

§126.2. General Terms and Conditions.

General terms and conditions of this subchapter are as follows:

(1) Method of disposal. A state agency that determines that it has surplus property or salvage property shall inform the commission and the comptroller of the property's kind, number, location, condition, original cost or value, and date of acquisition. Additionally, based on the condition of the property, a state agency shall determine whether the property is:

(A) Surplus [~~surplus~~] property that should be offered for transfer under §2175.125 of the Texas Government Code and §126.3 of this title (relating to Direct Transfer, Priority, Reporting, and other Disposition); or

(B) Should [~~should~~] be disposed of by competitive bidding, auction or direct sale under §126.4 of this title (relating to Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale); or is

(C) Salvage [~~salvage~~] property.

(D) A state agency making this determination shall inform the commission and the comptroller of its determination.

(2) Notice of availability. The commission shall maintain a list of current surplus or salvage property and inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists such property that is available for sale.

(3) Priority for transfer to state agency. During the ten (10) business days after property is posted on the comptroller's website, a transfer to another state agency has priority over any other type of transfer under this subchapter.

(4) Disposition of surplus or salvage data processing equipment. Surplus or salvage data [~~Data~~] processing equipment from state agencies, institutions or agencies of higher education, or eleemosynary institutions that is [~~if~~] not disposed of pursuant to [~~under in accordance with~~] the Texas Government Code, §2175.125, §2175.184, or other law, shall be transferred by the state agency or institution to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, of the Education Code, to an assistance organization specified by the school district or to the Texas Department of Criminal Justice. An eleemosynary institution or an institution or agency of higher education [~~The state agency or institution~~] may not collect a fee or other reimbursement from the district, the school, the assistance organization specified by the school district or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment. Pursuant to §2175.306, a state agency involved in health, human services or education (excluding institutions of higher education), when disposing of surplus computer equipment, shall give a preference to a public school, school district or assistance organization specified by the school district. Pursuant to Texas Government Code, §2175.305, the Secretary of State shall give preference to transferring surplus computer equipment to counties for the purpose of improving voter registration technology in compliance with the Election Code, §18.063.

(5) Purchaser's fee. The commission or agency disposing of surplus or salvage property under this subchapter shall assess and collect from the purchaser a fee over and above the proceeds from the sale of property, to recover the costs associated with the sale of property. The fee shall be set and reviewed annually by the commission and shall be at least two percent (2%) but not more than twelve percent (12%) of the sale proceeds. Property disposed of by direct transfer under §126.3 of this title (relating to Direct Transfer, Priority, Reporting, and other Disposition) is not subject to the purchaser's fee.

(6) Delegation of authority to state agency. If a state agency demonstrates to the commission its ability to dispose of its own surplus or salvage property to the public in a manner that results in cost savings to the state, the commission may authorize the agency to do so. The agency shall follow procedures provided by the commission at the time the delegation is granted and shall provide a report of the proceeds by assigned sale number no later than September 10th of each year for the prior fiscal year.

(A) Delegation of authority will be based on receipt of and concurrence by the commission of the agency's projection of cost savings to the state.

(B) Criteria used to delegate authority to a state agency demonstrating cost savings to the state may include information about the property such as age, condition, limited use, size, volume, expected return and/or location; information about the agency such as its ability to account for and report staffing, disposals, location, and/or specific knowledge about the property.

(7) Delegation of deletion authority to state agencies. The commission hereby delegates to state agencies the authority to delete surplus or salvage property from the State Property Accounting System after any method of disposition listed under this subchapter.

(8) Firearms. The purchaser of a surplus firearm must be a licensed firearm dealer.

(9) Rejection of bids. The state reserves the right to reject any bid or part of a bid, and or waive minor technicalities.

(10) List of buyers. The commission shall maintain an annually updated list of qualified buyers of surplus and salvage property. The commission shall renew annually a list it maintains of

(A) Assistance [~~assistance~~] organizations and individuals responsible for purchasing for political subdivisions who have requested information regarding available state surplus or salvage property; and

(B) Other [~~other~~] prospective buyers of surplus and salvage property.

(C) Names may be deleted from lists maintained by the commission for failure to bid, failure to make a payment or failure to remove awarded items.

(D) A buyer who has been removed from the buyers list for failure to make a payment or to remove surplus or salvage property may not reinstated to the list until a written request has been presented to and approved by the commission.

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 December 12, 2003.

TRD-200308543
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 463-4257

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Office of Rural Community Affairs (Office) proposes amendments to §255.7 concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The amendments are being proposed to establish the standards and procedures by which the Office and the Texas Department of Agriculture will allocate and distribute funds under the Texas Capital Fund and to create a new program under the Texas Capital Fund called the Downtown Revitalization Program. The amendments are being proposed to make changes to the Texas Capital Fund application and selection criteria and to describe the application and selection criteria the Downtown Revitalization Program.

Robt. J. "Sam" Tessen, MS, Executive Director of the Office, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robt. J. "Sam" Tessen, MS, Executive Director of the Office, also has determined that for the period that the section is in effect, the public benefit as a result of enforcing the section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas. There will be no effect on any small businesses or micro-business. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone : (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§255.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements program, projects may also qualify if they meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

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

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less; and 4:1 for awards of $750,000 to $1,000,000. The main street program requires a minimum 0.2:1 match. The downtown revitalization program requires a minimum 0.1:1 match. [~~The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less (except for the main street improvements program in which case a 0.5:1 match for cities with a population of less than 5,000 is acceptable), 4:1 for awards of $750,001 to $1,000,000, and 9:1 for awards of $1,000,001 to $1,500,000.~~]

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed $25,000 for awards of $750,000 or less; $10,000 for awards of $750,001 to $1,000,000; and $5,000 for awards

of $1,000,001 to $1,500,000. These requirements do not apply to the main street program or the downtown revitalization program [~~Main Street Program~~].

(6)-(8) (No change.)

(9) With the exception of the main street [~~improvements~~] program and the downtown revitalization program, the TDA will only consider applications that provide funding for one business.

(10) (No change.)

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street [~~improvements~~] project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street geographic area or if the main street project selected the elimination of slums and blight as its national program objective and the assisted business will create or retain jobs to meet the national program objective.

(12)-(13) (No change.)

(14) TDA will allocate the available funds for the year, less $600,000 for the main street [~~Main Street~~] program, and $600,000 for the downtown revitalization program, as follows:

(A) First round. 50% of the annual allocation plus any deobligated and program income funds available, as of the application due date.

(B) Second round. 60% of the remaining allocation plus any deobligated and program income funds available, as of the application due date.

(C) Third round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs.

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the community and leased to a specific benefitting business (either a for-profit entity or a non-profit entity).

(3) The main street [~~improvements~~] program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

(4) The downtown revitalization program. The downtown revitalization program provides public improvements to a city's historic main business district.

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program [~~Main Street Program~~]) is available three times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program [~~Main Street Program~~] are accepted annually. Applications will not be accepted after 5:00 pm on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefitting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department [~~Office~~] is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) (No change.)

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA executive director. TDA executive director makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division [~~Trade and Investment Division~~]. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources[. The applicant must document that other funds are unavailable to fund the project. Cities that collect an economic development sales tax must document status of funds, including balance available, monthly collections and a detailed list of outstanding commitments];

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCDP funds.

[(5) A copy of a complete application must be provided to the appropriate Regional Review Committee (RRC). Proposals submitted for funding under the TCF require regional review "from the standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. It has been determined that the participation by the RRC, as defined in the TCDP Annual Action Plan, meets the intent and purpose of these statutes through this concurrent review process. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the staff provided, such comments are received by the staff prior to a recommendation to management.]

(5) [(6)] Upon TDA staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(6) [(7)] TDA staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner.

(7) [(8)] The TDA Commissioner reviews the recommendation and announces the final decision.

(8) [(9)] TDA staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA staff may negotiate some elements of the final contract agreement with the recipient.

(9) [(10)] The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

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

(3) Jobs (maximum 20 points).

(A) Job Impact (maximum 10 points). Awarded by taking the business' [Business'] total job commitment, created & retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's.

(B) (No change.)

(4) (No change.)

(g) (No change.)

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, THC evaluates applications based on the scoring criteria and ranks them in descending order.

(3) TDA staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In any event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The project feasibility;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources[. The applicant must document that other funds are unavailable to fund the project. Cities that collect an economic development sales tax must document status of funds, including balance available, monthly collections and a detailed list of outstanding commitments]; and

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF [TCDP] funds.

[(5) A copy of a complete application must be provided to the appropriate Regional Review Committee (RRC). Proposals submitted for funding under the TCF require regional review "from the

~~standpoint of consistency with regional plans and other such considerations" as provided for under the Texas Review and Comment System and Chapter 391, Texas Local Government Code. It has been determined that the participation by the RRC, as defined in the TCDP Annual Action Plan, meets the intent and purpose of these statutes through this concurrent review process. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by THC and TDA provided, such comments are received by TDA prior to a recommendation to management.~~]

(5) [~~(6)~~] Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by [~~THC and~~] TDA staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(6) [~~(7)~~] TDA staff prepares a project report and makes a recommendation for approval or denial to TDA's Commissioner or the Commissioner's designee for the final decision.

(7) [~~(8)~~] The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.

(8) [~~(9)~~] The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, unless an extension is granted, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.

(i) (No change.)

(j) Threshold criteria for the main street [~~improvements~~] program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA executive director. TDA executive director makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The strength of commitments from all other public and/or private investments identified in the application;

(B) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(C) Whether efforts have been made to maximize other financial resources; and

(D) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(l) Scoring criteria for downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on poverty rate stated on the score sheet. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on unemployment rate stated on the score sheet. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's unemployment rate (for cities, the most recently available quarterly city rate will be used; for counties, the most recently available quarterly county or census tract rate, for where the business site is located, whichever is higher, will be used) is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available quarterly unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels.

(G) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate.

(I) Commercial Support (maximum 10 points) Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.

(J) Sidewalks/ADA Compliance (10 points). A minimum of 70% of the requested funds must be used for sidewalk/ADA compliance.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

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 December 10, 2003.

TRD-200308487
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 936-6710

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.80

The Commission proposes to amend §3.80, relating to Commission Forms, Applications and Filing Requirements, to add language concerning electronic filings with the Commission, to require rulemaking for adoption or revision of forms, and to incorporate a list of current forms and their creation or last revision dates.

Over the past few years, the procedure for updating Oil and Gas Division forms to meet Commission and external customer needs has been inconsistent. There is a need for a formal forms adoption process to balance changes to forms with the needs of staff and other stakeholders, computer programming and other information technologies capabilities and priorities, and legal issues concerning notice of form changes. Furthermore, the Commission's ongoing Oil & Gas Migration (OGM) Project is bringing about increased electronic filing capabilities and form changes, and thus makes more urgent the need for a more structured--even formal--process.

In the past, forms were revised with input from Commission staff and external customers through an informal process. Currently, §3.80 states that "the Commission may revise any forms, at its discretion, without having a rulemaking proceeding *if the revisions do not result in any substantive changes to the forms*" (emphasis added); however, the rule does not define "substantive changes." In addition, stakeholders have advised the Commission that even seemingly minor changes to some forms may present major problems for them. Further, the Commission's Office of General Counsel (OGC) has indicated that it is preferable that any form the Commission requires be adopted or revised through formal rulemaking, and that rulemaking is legally required when information regarding the necessity and use of a form, and the penalties for failure to comply, are found only on the form itself.

The Commission evaluated several possible options for addressing these issues. The first option was to amend each rule pertaining to a form to include a specific reference to the appropriate form or forms, and to initiate a rulemaking to amend that rule when a form change is proposed. The form would show as the creation or revision date the effective date of the rule amendment. A second option was to amend §3.80 to include a list of all forms with the creation or last revision date and to amend §3.80 whenever a new or amended form is proposed. A third option was to provide for both informal and formal notice of, and opportunity to comment on, proposed forms changes through publication on the Commission's web site and in the section of the *Texas Register* entitled "In Addition."

Discussion of Oil and Gas Division forms and the need for a more structured process also was targeted in Commissioner (then Chairman) Michael Williams' Regulatory Vision effort by the "Process for Managing Forms Issue Group" (the Issue Group). This group, made up of Commission staff and industry representatives, consulting firms, and other stakeholders, developed a procedure for managing Oil and Gas Division forms, which would be a more formalized version of the Commission's past process. This more structured and formal procedure would direct all requests for form changes to the Oil and Gas Division Director; include establishment of a Form Work Group for each proposed form change; incorporate a period of informal review and comment; and include a formal rulemaking process to amend §3.80 to approve and adopt the new or amended form. The process for managing forms recommended by the Issue Group is as follows:

Process for Managing Oil and Gas Division Forms developed by the Issue Group

1. Forms changes will be initiated through: (1) a change in a rule or law; (2) a request from a Commissioner or agency staff; or (3) a request from an external customer.

2. Any change requested by staff or an external customer will be required to be accompanied by an explanation of and support for the proposed changes and a preliminary identification of impacts to the Commission.

3. The request will be submitted to the Oil and Gas Division Director (the Director), who either will refer it back to the originator with a request for more information or a rejection of the proposal or will authorize an ad hoc Form Work Team with instructions to proceed with the proposed change.

4. The Form Work Team, which will include appropriate Oil and Gas Division, Information Technologies Division, and Office of General Counsel staff, will perform a detailed analysis and draft the proposed new or amended form; circulate the proposal within the Commission; and complete a final draft form.

5. The Director will request approval from the Commission to seek comments from external stakeholders.

6. If the Commission approves the request, staff will provide notice of the proposed form change in the *Texas Register* in the "In Addition" section; on the Commission's Web site; and in a stripout, subscription, or stakeholder mailing list, as appropriate.

7. The Form Work Team will receive and analyze comments and recommendations from all stakeholders and will revise the draft form as necessary and appropriate.

8. The Form Work Team will draft the proposed amendment to §3.80 and any necessary amendments to other rules.

9. The Form Work Team will send the final draft new or amended form and the proposed rule amendments to the Director.

10. The Director will request Commission approval to publish for formal comment the proposed new or amended form and rule amendments.

11. If the Commission approves, staff will submit for publication the proposed rule amendments and a copy of the proposed new or amended form in the *Texas Register* for formal comment.

12. After the comment deadline, the Form Work Team will review and analyze the comments and make changes, if necessary and appropriate, to the form and/or rule(s).

13. The Director will request that the Commission adopt the rule amendments and new or amended form.

14. If the Commission adopts the rule and the form, staff will submit for publication the final rule(s) and form in the *Texas Register*.

The process proposed by the Issue Group includes both informal comment and formal comment associated with rulemaking; thus, it is not expeditious. The proposed forms management process may not be realistic over the next few years for forms changes that result from the Commission's OGM Project because of firm project deadlines for completing certain work and the need to finalize internal data information needs. In addition, the need for rapid progress in the OGM Project may mean that there will not be sufficient time to allow informal comment prior to formal comment through rulemaking.

The OGM Project is a major business process re-engineering and information technology initiative to move the Commission's outdated computer mainframe technologies to an open systems environment. The purpose of the project is to improve the Oil and Gas Division's internal business processes and provide the public with access to accurate information in a real-time environment. Additionally, this project provides the opportunity for reassessing data reporting requirements and for enhancing filing capabilities through an improved Electronic Data Interchange (EDI) process and on-line filing system. The Commission's OGM Project, into which Electronic Compliance and Approval Process (ECAP) has been incorporated, will eventually enable the Commission to meet its ultimate goal of implementing a totally paperless electronic workflow system for regulatory permitting and reporting through the use of Internet-based technologies, relational databases, document imaging, and workflow software. Therefore over the next few years, the Commission periodically will be revising forms or adopting new ones to reflect new screen configurations for all compliance permits and performance reports that are filed with the Commission.

The Commission's objective is to provide as much time as possible for stakeholder review and comment without delaying work on the OGM Project. Therefore, during the OGM Project, the Commission will be asking stakeholders for up-front comments on Commission forms that the Commission may consider during the OGM Project, and will use the Commission's web site to notify stakeholders of upcoming proposed form changes and to obtain stakeholder input in a more expeditious manner than would be possible through an extended informal comment period. The proposed amendments to §3.80 will establish the process to be used in the future and, at the very least, will assure that stakeholders will have an opportunity to submit formal comments on any form change proposed by the Commission. The Commission also proposes to revise language relating to electronic filing in anticipation of changes and/or new electronic filing opportunities that will develop in association with the expansion of the ECAP and the OGM Project.

The Commission proposes to amend §3.80(a) to delete language that allows the Commission to revise any form, at its discretion, without having a rulemaking proceeding. The proposed amendment also adds Table 1, entitled Railroad Commission Oil and Gas Division Forms, which lists all Oil and Gas Division forms and the date that each was adopted or last revised. The Commission proposes to add language to subsection (a) to require that a complete set of all Oil and Gas Division forms be posted on the Commission's web site. The Commission proposes to add language in subsection (a) to allow an organization to file any required or discretionary filing using

either the prescribed paper form or any electronic filing process in accordance with subsections (e) or (f) of §3.80, as applicable. The Commission also proposes to add language in subsection (a) to allow the Commission to accept an earlier version of a prescribed form, provided that it contains all currently-required information. The expected result is that stakeholders will have specific notice of when the Commission proposes to adopt or change a form and will have an opportunity to comment through the formal rulemaking process. These proposed amendments will also provide the regulated community with a list of all Oil and Gas Division forms and the creation or revision date of the current versions.

The Commission proposes to amend §3.80(b), relating to definitions, to alphabetize the definitions, to add a definition for "form," and to replace the existing definition of "electronic filing" with a definition of "electronic filing process." The Commission proposes to define "form" as a "printed or typed document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information." The Commission proposes to define "electronic filing process" as "an electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions."

The Commission proposes to amend §3.80(c) to change the five years to seven years, in accord with amendments to Texas Natural Resources Code, §91.114(a)(2), made by Senate Bill 1484 (Acts 2003, 78th Legislature, ch. 956, §1, effective June 20, 2003).

The Commission proposes to add a new subsection (e), relating to authorization and standards for electronic filing. New §3.80(e)(1) allows an organization to file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

Proposed new §3.80(e)(2) provides that an organization filing or upon whose behalf is filed electronically any form shall be deemed to have knowledge of and to be responsible for the information filed on a form pursuant to the statutory requirements, restrictions, and standards found in and pertaining to Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging); Texas Natural Resources Code, Title 5 (geothermal resources); Texas Natural Resources Code, Title 11 (hazardous liquids storage); Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities); Texas Water Code, §26.131 (discharge permits); Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells); Texas Water Code, Chapter 29 (oil and gas waste haulers); Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and Texas Administrative Code, Title 16, Chapter 3 and Chapter 4.

Proposed new §3.80(e)(2) would also require that all electronic forms that an organization transmits or that are transmitted on its behalf be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities. This proposed new paragraph would also provide that the Commission may notify an organization electronically of, and may provide the ability for an organization to confirm, the Commission's receipt of a form electronically submitted by or on behalf of that organization. Numerous operators contract with third-party consultants to handle required and discretionary filings with the Commission. Because an organization whose name appears on a form filed with the Commission is ultimately responsible for the filing and the information contained in the filing, the Commission proposes to build into its new open computer system a method by which to notify an organization of an electronic filing or a way for an organization to electronically check to determine if the Commission has received any electronic filings for that organization.

The Commission proposes language in §3.80(e)(3) to reiterate the Commission's existing duty to hold an organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that is filed on its behalf. The proposed new language reiterates that each organization has an obligation to review and correct, if necessary, all forms, information, or data that an organization files or that is filed on its behalf.

Proposed new §3.80(e)(4) provides that the Commission may give electronic notice to an organization of an electronic filing, and may provide the ability for an organization to check whether the Commission has received electronic filings it made or that were made on its behalf.

Proposed new §3.80(e)(5) states that the Commission deems the signature of an organization's authorized representative to appear on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

Proposed new §3.80(e)(6) reiterates each organization's responsibility, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that is filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

The Commission proposes to delete existing §3.80(e), which referred to requirements for electronic filing under ECAP. The Commission also proposes to delete the language in existing §3.80(f), which relates to requirements for electronic filing under the EDI program. The language in both these subsections is proposed to be replaced with the broader language in proposed new §3.80(e) to accommodate possible changes in the requirements for electronic filing associated with the Commission's new automated systems. There will be no immediate changes for any operator that has met the ECAP and EDI filing requirements. The Commission will provide advance notice of any future changes in electronic filing requirements.

The Commission proposes to re-designate current §3.80(g), relating to other electronic transmission, to subsection (f), to allow the Commission, at its discretion, to accept any other documents or data electronically transmitted.

In conjunction with the proposed amendments to §3.80, the Commission also proposes to adopt revised forms related to Class II Underground Injection Control (UIC) well applications, adopt a new production reporting form (Form PR), and adopt a revised Form W-1 (Application for Permit to Drill, Recomplete, or Re-Enter), as well as new forms W-1D and W-1H (Directional Well Information and Horizontal Well Information, respectively).

The Commission proposes to revise Form W-14, Application to Dispose of Oil and Gas Waste by Injection into a Formation Not Productive of Oil and Gas; Form H-1, Application to Inject Fluid into a Reservoir Productive of Oil or Gas; and Form H-1A, Injection Well Data (an attachment to Form H-1). The Commission proposes to add a few new data elements to these forms which

the Commission requires to enable review of the application but for which there is currently no space on the forms. The Commission also proposes to delete certain information currently requested on the forms, but not required by the rules. These form revisions have been in development for several years--the latest discussions occurred in conjunction with Commissioner Williams' Regulatory Vision efforts--with much opportunity for review and comment by stakeholders. Copies of the proposed revised forms are being published in this issue of the *Texas Register* for review and comment. Upon adoption of the revisions to these UIC forms, the new revision date will be indicated on Table 1.

As a part of the ongoing OGM Project, the Commission is proposing revisions to Form W-1, Application to Drill, Deepen, Plug Back, or Reenter, as well as adoption of two proposed new forms, Form W-1D, Directional Well Information, and Form W-1H, Horizontal Well Information. These proposed new forms contain no new data requirements. The proposed revision to Form W-1 and the new Forms W-1H and W-1D reflect the current flow of the ECAP screens for electronically applying for a drilling permit and will facilitate the Commission's conversion of the filing, review and approval of a well's drilling permit application to a completely electronic process.

In addition, the Commission proposes to revise Form P-1, Producer's Monthly Report of Oil Wells, and Form P-2, Producer's Monthly Report of Gas Wells, to consolidate production reporting on one monthly form, the proposed new Form PR, Monthly Production Report. Proposed new Form PR was initially presented to potentially affected external stakeholders, including representatives of industry, consultants, and forms software providers, at an October 10, 2003, meeting as a part of the OGM project. The comments on the proposed revised production reporting form received by the Commission as a result of that meeting were generally positive. Changes on the proposed new Form PR include elimination of gas lift volumes, elimination of disposition Code 9 for well separation extraction loss on gas wells, and a break-down for more specificity on disposition Code 7 (other dispositions).

The Commission is requesting comments on these proposed forms as part of this rulemaking. The Commission is currently in the process of contracting with a third party to help with form design so that these forms can be scanned; therefore, the specific format design of the forms proposed today may change slightly, but the overall format and required information will not change substantially.

In addition, the Commission is currently beginning work on several other Commission forms for the fiscal year 2004 OGM project. These forms include Form T-1, Monthly Transportation and Storage Report, Form P-4, Producer's Transportation Authority and Certificate of Compliance, and Form P-5, Organization Report. The Commission specifically solicits comments on these forms, even though they are not part of the current proposal.

Leslie Savage, Oil and Gas Division planner, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be no fiscal implications for local governments and no net fiscal implications for the state. The largest portion of the proposed amendments to §3.80 relates to changes that the Commission already has planned in association with the OGM Project. The Commission has drafted this proposed language with sufficient breadth to consider any of the possible options related to electronic filing that might be considered for adoption through the OGM Project.

Ms. Savage has estimated that the cost of compliance with the proposed amendments to §3.80 for individuals, small businesses, or micro-businesses will be negligible. At this time, electronic filing of Oil and Gas Division information at the Commission is discretionary; currently, the Commission does not require electronic filing of any Oil and Gas Division documents or data. Those entities currently filing production reports electronically may incur costs associated with system conversion. However, the Commission has no information that would allow it to estimate this cost. The Commission specifically solicits information and comments concerning potential costs of using electronic filing procedures.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses, which must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Because entities required to file an organization report and affiliates of such entities performing operations within the jurisdiction of the Commission are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot determine whether a particular entity required to comply with §3.80 may be a small business or a micro-business. However, the Commission has determined that it is likely that some operators would meet the definitions of these terms in Texas Government Code, §2006.001. The Commission assumes further that, during a given year, at least one entity that would wish to make an electronic filing with the Commission in accordance with §3.80 would be an individual, small business, or micro-business. For the purpose of making the comparison required by Texas Government Code, §2006.002(c), the Commission assumes that the cost of writing, typing, copying, and mailing any form necessary to enable the business to make electronic filings with the Commission is $50. Therefore, the cost of complying with §3.80, as amended, would be $50 per employee if the entity has one employee, $2.50 per employee if the entity has 20 employees, and $0.50 per employee if the entity has 99 employees. Comparable cost per employee of electronic filing for the largest businesses affected by the proposed amendment would be $0.10 for an employer of 500 persons and $0.05 for an employer of 1,000 persons.

After the entity has completed the necessary requirements to enable the entity to file documents and data with the Commission electronically, the entity should save money previously spent on postage and handling.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission

specifically requests comments and information on the proposed form changes that are part of this rulemaking, and on any Commission form that might be affected in the future because of the OGM Project or other factors. The Commission will accept comments for 30 days after publication in the *Texas Register*, and encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.80 pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; and §91.142, which requires the Commission to obtain specified information from a person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of performing operations which are within the jurisdiction of the Commission.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

Issued in Austin, Texas on December 9, 2003.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall [~~will~~] be those prescribed by the Commission as listed in Table 1 of this subsection. [~~The Commission may revise any forms, at its discretion, without having a rulemaking proceeding if the revisions do not result in any substantive changes to the forms.~~] A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall [~~will~~] be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information.
Figure: 16 TAC §3.80(a)

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

(1) Commission--The Railroad Commission of Texas.

(2) Electronic filing process--An electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions.

[~~(2) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:~~]

[~~(A) an officer or director of the organization;~~]

[~~(B) a general partner of the organization;~~]

[~~(C) the owner of an organization which is a sole proprietorship;~~]

[~~(D) the owner of more than a 25 percent ownership interest in the organization; or~~]

[~~(E) the designated trustee of the organization.~~]

(3) Form--A printed or typed paper document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information.

[~~(3) Violation--Non-compliance with a statute, commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.~~]

[~~(4) Electronic filing--An electronic transmission to the commission in the prescribed form and format authorized by the commission.~~]

(4) [~~(5)~~] Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

(5) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility. The Commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the seven [~~five~~] years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a Commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the Commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the Commission relating to the violation or to the alleged violation have not been collected.

(e) Authorization and standards for electronic filing.

(1) An organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

(2) The Commission deems an organization that files electronically or on whose behalf is filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in and pertaining to:

(A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging);

(B) Texas Natural Resources Code, Title 5 (geothermal resources);

(C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

(D) Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities);

(E) Texas Water Code, §26.131 (discharge permits);

(F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells);

(G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

(H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and

(I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and Chapter 4 (Environmental Protection).

(3) All forms that an organization submits or that are submitted on behalf of an organization shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(4) The Commission may provide notice electronically to an organization of, and may provide an organization the ability to confirm electronically, the Commission's receipt of a form submitted electronically by or on behalf of that organization.

(5) The Commission deems that the signature of an organization's authorized representative appears on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

(6) The Commission holds each organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that is filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

[(e) Requirements for electronic filing under the Electronic Compliance and Approval Process (ECAP). An organization may submit to the commission an electronic filing pursuant to the Electronic Compliance and Approval Process if:]

[(1) the organization and the commission have executed a Master Electronic Filing Agreement;]

[(2) the commission has authorized the electronic filing in a prescribed form and format as identified in Supplement 1 to the Master Electronic Filing Agreement;]

[(3) the organization has filed a Security Administrator Designation with the commission; and]

[(4) the organization pays all required filing fees.]

[(f) Requirements for electronic filing under the Electronic Data Interchange (EDI) program. An organization may submit an electronic filing with the commission pursuant to the Electronic Data Interchange program if:]

[(1) the organization has executed a Master Electronic Filing Certification;]

[(2) the commission has authorized the electronic filing in a prescribed form and format under Electronic Data Interchange program; and]

[(3) the organization and any authorized agent comply with all provisions published by the commission for electronic filings.]

(f) [(g)] Other electronic transmissions. The Commission may at its discretion accept other documents or data [written notice] electronically transmitted.

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 December 9, 2003.

TRD-200308449
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES
DIVISION 2. SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) proposes an amendment to §61.1012, concerning contracts and tuition for education outside a district. The section establishes definitions, explains tuition charges for transfer students, and describes the maximum tuition amount allowed for property value adjustment. The proposed amendment would modify the existing rule to allow a district to charge tuition at a rate higher than the rate limit established by statute, while limiting the tuition-related adjustment to the district's property value to the statutory limit, in accordance with House Bill (HB) 1619, 78th Texas Legislature, 2003.

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 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. HB 1619, 78th Texas Legislature, 2003, modified TEC, §25.039 and §42.106, allowing a district to charge tuition at a rate higher than the rate limit established in statute. However, a district's tuition-related adjustments to property value are still statutorily limited.

The proposed amendment to 19 TAC §61.1012 adds language in subsection (b) to address higher tuition rates, the written agreement between the home district and the receiving district, and the adjusted property value for the home district. In addition, language is added in subsection (c) to clarify the maximum amount to be used in the adjustment to property value.

Joe Wisnoski, deputy associate commissioner for school finance and fiscal analysis, 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 section.

Mr. Wisnoski 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 section will be more latitude for local school districts in negotiating tuition rates for transfer students. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 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 a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §25.039 and §42.106, as amended by HB 1619, 78th Texas Legislature, 2003, 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.

The amendment implements the Texas Education Code, §25.039 and §42.106.

§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), §42.1606, the amount of tuition that may be attributed [~~Tuition charged~~] 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 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, [~~Texas Education Code (TEC),~~] Chapter 42, Subchapters B, C, and F, plus M&O tax collections, with the sum divided by enrollment, less the state aid gained by the addition of one transfer 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 and 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 and the local share of the EDA are subtracted from debt taxes budgeted to be collected as reported through PEIMS.

(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.

(A) For this purpose, the GYA is calculated as the product of the elements guaranteed leave (GL) multiplied by weighted average daily attendance (WADA), then multiplied by district tax rate (DTR), and finally by 100. 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) 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.

(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 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. 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 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.

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 December 15, 2003.

TRD-200308567
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 475-1497

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SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1035

The Texas Education Agency (TEA) proposes an amendment to §61.1035, concerning assistance with payment of existing debt. The section establishes eligibility; defines qualifying debt service; and explains limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt. The proposed amendment would modify eligibility for the Existing Debt Allotment (EDA) based on changes to statutory language, in accordance with House Bill 3459, 78th Texas Legislature, 2003. Additional changes are proposed to clarify the requirements related to local tax effort.

Through 19 TAC §61.1035, adopted to be effective December 12, 1999, the commissioner exercised rulemaking authority relating to assistance with payment of existing debt. The current provisions include the establishment of eligibility; definition of qualifying debt service; and explanations of limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt. House Bill 3459 modified TEC, Chapter 46, changing the eligibility criteria for the Existing Debt Allotment. The proposed amendment to 19 TAC §61.1035 modifies language describing the eligibility criteria needed to reflect the legislative change as well as providing several additional clarifications.

Language is added in subsection (a) to specify that payment on bonds must have been made on or before August 31, 2003, in order to meet eligibility criteria. Language in subsection (b)(1)(D) is modified to clarify the application of excess tax collections in order to simplify the process and eliminate a report that has been required of school districts. Language is also added in subsection (b)(3) to clarify the application of excess tax collections as well as Interest and Sinking (I&S) fund taxes. Language is added to subsection (c)(1) to clarify the application of I&S fund taxes during the last fiscal year of a biennium. Finally, language is added to subsection (f) to clarify documents necessary to verify the debt service attributed to eligible refunded bonds.

Joe Wisnoski, deputy associate commissioner for school finance and fiscal analysis, 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 section.

Mr. Wisnoski 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 section will be the clarification of which debt is eligible for state assistance through EDA, as well as clarification of the application of local school district taxes for the purpose of meeting local share requirements. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 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 a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §46.031 and §46.061, which authorize the commissioner of education to adopt rules for the administration of TEC, Chapter 46, Subchapter B, Assistance with Payment of Existing Debt, and to by rule provide for the payment of state assistance under TEC, Chapter 46, to refinance school district debt.

The amendment implements the Texas Education Code, §§46.031, 46.032, 46.033, 46.034, 46.035, 46.036, and 46.061.

§61.1035. Assistance with Payment of Existing Debt.

(a) Eligibility. Certain restrictions apply to debt and to school districts eligible for the existing debt allotment (EDA).

(1) Debt eligible for the EDA is an existing obligation of a school district made through the issuance of a bond for instructional or non-instructional purposes pursuant to Texas Education Code (TEC), Chapter 45, Subchapter A, or through the refunding of bonds as defined in TEC, §46.007. The district must have made a payment on the

bonds on or before August 31, 2003. Lease-purchase arrangements authorized by Local Government Code, §271.004, are not eligible.

(2) Eligible debt does not include any portion of an existing obligation that has been approved for financial assistance with the Instructional Facilities Allotment (IFA) as defined in §61.1032 of this title (relating to Instructional Facilities Allotment), in accordance with TEC, Chapter 46.

(3) Certain other refinanced debt may be eligible for funding under this subsection.

(A) A lease purchase refunded with a general obligation bond shall be eligible for consideration for the EDA in future years based on the date of payment on the new bond and the limits on tax rates that apply.

(B) Any portion of a bond issue that refinances a portion of an original lease-purchase arrangement that was eligible for IFA consideration but exceeded the IFA limit shall be eligible for consideration in future years pursuant to this subsection based on the date of first payment on the new bond and the limits on tax rates that apply.

(C) If a lease purchase that is not funded in the IFA program is refinanced with a general obligation bonded debt, the bonded debt shall gain eligibility for the EDA by the terms of the EDA program. Any Interest and Sinking (I&S) fund tax effort associated with the bonded debt payments may be counted for purposes of computing the EDA. Qualification pursuant to this subsection shall be according to the terms of the program, including the date of first payment on the bond and the relevant tax rate limitation.

(D) Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of funding consideration pursuant to the EDA.

(b) Qualifying debt service. Certain district revenues may qualify to meet the local share requirement of the EDA when computing state assistance amounts.

(1) I&S fund taxes collected in the current school year may qualify toward meeting the local share requirement of the EDA. In addition, other district funds budgeted for the payment of bonds may qualify to meet the EDA local share requirements.

(A) Funds budgeted by a district for payment of eligible bonds may include I&S fund taxes collected in the 1999-2000 school year or later school year in excess of the amount necessary to pay the district's local share of debt service on bonds in that year, provided that the taxes were not used to generate other state aid.

(B) Funds budgeted by a district for payment of eligible bonds may include Maintenance and Operations (M&O) taxes collected in the current or previous school year that are in excess of amounts used to generate other state aid.

(C) The commissioner of education will provide each district with information about what tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year.

(D) The [~~Districts must inform the~~] commissioner of education will determine the amount of excess collections, [~~amounts,~~] if any, to be applied to the EDA local share requirement [~~, if such contributions are derived from current or preceding year tax collections not equalized by state assistance~~].

(2) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the final statement stipulates the requirements of the I&S fund and the bond covenant.

(3) I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year [~~debts~~], second to satisfy the local share requirements of any IFA debts for that school year, and lastly to excess taxes that may raise the limit for the EDA program in a subsequent biennium if collected in the second year of a state fiscal biennium.

(4) Computation of state aid in the EDA program for a variable rate bond shall be based on the minimum payment requirement. A district may receive such state aid for payment on a variable rate bond in excess of the minimum payment requirement as long as the additional amount meets certain conditions.

(A) The payment is necessary to meet the computed interest costs for the year.

(B) The amount shall not exceed the applicable limit for debt established pursuant to TEC, §46.034(b).

(C) The district shall notify the commissioner of education of its intent prior to the adoption of the district's tax rate for debt service for the applicable year.

(5) A district may exercise its ability to make payments in excess of the minimum payment required but the excess amount shall not be used in determining the limit on the existing debt tax rate (EDTR) or in the calculation of state assistance in that year.

(6) Computation for fixed-rate bonds shall be based on published debt service schedules as contained in the official statement. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.

(c) Limits on assistance. The amount of state assistance is limited by the lesser of a calculated EDTR for eligible debt or an appropriated debt tax limit.

(1) The calculated EDTR is a rate determined with the debt limit resulting from the lesser of calculations specified in subparagraphs (A) or (B) of this paragraph.

(A) EDTR may be calculated as the I&S fund taxes collected for eligible bonds for the last fiscal year of the preceding state fiscal biennium divided by the property value used for state funding purposes in that year, then multiplied by 100.

(B) EDTR may be calculated as the current year debt service payment on eligible bonds divided by the product of the current year average daily attendance (ADA) multiplied by $35, then divided by $100.

(2) The EDTR used in the funding formula cannot exceed the appropriated limit ($.29).

(3) For purposes of computing EDTR, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.

(d) Data and payment cycles. The necessary data elements to calculate state assistance for existing debt and the associated payment cycle are determined by the commissioner of education.

(1) An initial, preliminary payment of state assistance will be made as soon as practicable after September 1 of each year. This payment will be based on an estimate of ADA; the taxable value of property certified by the Comptroller of Public Accounts for the preceding school year as determined in accordance with Government Code, Chapter 403, Subchapter M; and the amount of taxes budgeted to be collected for payment of eligible bonds. Districts will supply information about budgeted taxes in July on a data collection survey.

(2) A final determination of assistance for a school year will be made at the close of business for the current school year when final counts of ADA and collection amounts for eligible debt are available. This determination will also take into account, if applicable, a reduced property value that reflects either a rapid decline pursuant to TEC, §42.2521, or a grade level adjustment pursuant to TEC, §42.106.

(A) Any additional amounts owed will be paid as soon as practicable after the final determination is made.

(B) Any overpayment will be subtracted from the EDA in the subsequent year. If no such assistance is due in the subsequent school year, the Foundation School Fund will be reduced accordingly. If no payments are due from the Foundation School Fund, the district will be notified about the overpayment and must remit that amount to the Texas Education Agency (TEA) no later than three weeks after notification.

(e) Deposit and uses of funds.

(1) Funds received from the state for assistance with existing debt must be deposited in the district's I&S fund and must be taken into account before setting the I&S fund tax rate.

(2) State and local shares of the EDA must be used for the exclusive purpose of making principal and interest payments on eligible debt.

(f) Refinancing of eligible debt.

(1) A district that refinances eligible debt in part or in full must inform the TEA's division responsible for state funding in writing and must provide appropriate documentation related to the refinancing , including payment schedules for the refunded debt that clearly identify the bonds being refunded and the debt service attributable to the refunded bonds. State aid payments for EDA will not be processed until these documents have been received by the state funding division.

(2) The portion of the debt eligible for state assistance on refunded bonds is subject to the same limits as eligible debt that has not been refinanced.

(3) If a refunding pricing of a district decreases the current year bond payment requirement, the reduced payment amount shall be the basis of determining the limit on funding.

(4) If a refunding pricing of a district increases the bond payment requirement, the amount of increase shall not be used to determine state aid unless the pricing took place prior to January 1 of the last fiscal year of the preceding state fiscal biennium.

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 December 15, 2003.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING SCHOOL DISTRICT STAFF DEVELOPMENT

19 TAC §153.1011

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §153.1011, concerning school district staff development. The section establishes minimum staff development standards for school district personnel. The proposed repeal would reflect recent legislative changes relating to staff development requirements in accordance with the Texas Education Code (TEC), §21.451, amended by House Bill (HB) 1024, 78th Texas Legislature, 2003.

Through 19 TAC §153.1011, adopted to be effective October 1996, the commissioner exercised rulemaking authority over minimum staff development standards as authorized by TEC, §21.451, Staff Development Requirements. TEC, §21.451, was amended by HB 1024, 78th Texas Legislature, 2003, giving districts local options in the development of a comprehensive staff development program. The commissioner is no longer required to develop staff development standards for school districts. The proposed repeal of 19 TAC §153.1011 implements this legislative change.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Barnes has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the authorization for districts to develop their own staff development programs designed to improve education in their districts. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 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 repeal 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 repeal is proposed under the Texas Education Code, §21.451, as amended by HB 1024, 78th Texas Legislature, 2003, which authorizes local districts to develop staff development standards. The commissioner is no longer required to develop these standards for school districts.

The repeal implements the Texas Education Code, §21.451.

§153.1011. Minimum Staff Development Standards.

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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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.9

The Texas State Board of Pharmacy proposes amendments to §281.9, concerning Rules Governing Penalties Against a License. The amendments, if adopted, will make conforming changes in the existing rule to implement the provisions of new Chapter 297, Pharmacy Technicians.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to establish standards for the registration of pharmacy technicians. There is no fiscal impact for small or large businesses or to other entities who are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §§551.002, 554.051, 554.002, 554.053, and Chapter 568 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569 Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.002(6) as authorizing the agency to regulate the training, qualifications, and employment of a pharmacist-intern and pharmacy technician. The Board interprets §554.053 as authorizing the agency to establish rules for the use and the duties of a pharmacy technician in a pharmacy licensed by the Board. The Board interprets Chapter 568 as authorizing the agency to (1) require pharmacy technicians register with the Board; (2) outline the grounds for refusal to issue or renew a pharmacy technician registration; and (3) adopt fees necessary for the registration of pharmacy technicians.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.9. Rules Governing Penalties Against a License.

(a) Pharmacists, interns, and pharmacies. For the purpose of the Act, §565.051(a):

(1) "Probation" means the suspension of a sanction imposed against a license during good behavior, for a term and under conditions as determined by the board.

(2) "Reprimand" means a public and formal censure against a license.

(3) "Restrict" means to limit, confine, abridge, narrow, or restrain a license for a term and under conditions determined by the board.

(4) "Revoke" means a license is void and may not be reissued; provided, however, upon the expiration of 12 months from and after the effective date of the order revoking a pharmacist license, application may be made to the board by the former licensee for the issuance of a license upon the successful completion of any examination required by the board.

(5) "Suspend" means a license is of no further force and effect for a period of time as determined by the board.

(6) "Retire" means a license has been withdrawn and is of no further force and effect.

(b) Pharmacy technicians. For the purpose of the Act, §568.003(a):

(1) "Revoke" means a registration is void and may not be reissued; provided, however, upon the expiration of 12 months from and after the effective date of the order revoking a registration, application may be made to the board by the former registrant for the issuance of a registration.

(2) "Suspend" means a license is of no further force and effect for a period of time as determined by the board.

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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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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SUBCHAPTER D. MISCELLANEOUS

22 TAC §281.80

The Texas State Board of Pharmacy proposes new Subchapter D, Miscellaneous, §281.80, concerning Grounds for Discipline for a Pharmacy Technician. The new section, if adopted, will make conforming changes in the existing rules to implement the provisions of new Chapter 297, Pharmacy Technicians.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Dodson has determined that, for each year of the first five-year period the section will be in effect, the public benefit anticipated as a result of enforcing the section will be to establish standards for the discipline of pharmacy technicians. There is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposed new section may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The new section is proposed under §§551.002, 554.051, 554.002, 554.053, and Chapter 568 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569 Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.002(6) as authorizing the agency to regulate the training, qualifications, and employment of a pharmacist-intern and pharmacy technician. The Board interprets §554.053 as authorizing the agency to establish rules for the use and the duties of a pharmacy technician in a pharmacy licensed by the Board. The Board interprets Chapter 568 as authorizing the agency to (1) require pharmacy technicians register with the Board; (2) outline the grounds for refusal to issue or renew a pharmacy technician registration; and (3) adopt fees necessary for the registration of pharmacy technicians.

The statutes affected by the new section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.80. Grounds for Discipline for a Pharmacy Technician.

(a) For the purposes of the Act, §568.003(a)(2), the term "gross immorality" shall include, but not be limited to:

(1) conduct which is willful, flagrant, or shameless, and which shows a moral indifference to standards of the community;

(2) engaging in an act which is a felony; or

(3) engaging in an act that constitutes sexually deviant behavior.

(b) For the purposes of the Act, §568.003(a)(3), the terms "fraud," "deceit," or "misrepresentation" shall be defined as follows:

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing the board in reliance upon it to issue a registration; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive the board.

(2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud the board.

(3) "Misrepresentation" means a manifestation by words or other conduct which is a false representation of a matter of fact.

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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For further information, please call: (512) 305-8028

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.5

The Texas State Board of Pharmacy proposes amendments to §283.5, concerning Pharmacist-Intern Duties. The amendments, if adopted, will make conforming changes in the existing rule to implement the provisions of new Chapter 297, Pharmacy Technicians.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to establish standards for pharmacist interns. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §§551.002, 554.051, 554.002, 554.053, and Chapter 568 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569 Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.002(6) as authorizing the agency to regulate the training, qualifications, and employment of a pharmacist-intern and pharmacy technician. The Board interprets §554.053 as authorizing the agency to establish rules for the use and the duties of a pharmacy technician in a pharmacy licensed by the

Board. The Board interprets Chapter 568 as authorizing the agency to (1) require pharmacy technicians register with the Board; (2) outline the grounds for refusal to issue or renew a pharmacy technician registration; and (3) adopt fees necessary for the registration of pharmacy technicians.

The statutes affected by the amended section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.5. Pharmacist-Intern Duties.

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

(c) When not under the supervision of a preceptor pharmacist, a pharmacist-intern may function as a pharmacy technician and perform all of the duties of a registered [~~certified~~] pharmacy technician without registering as a pharmacy technician provided the pharmacist-intern:

(1) is registered with the board as a pharmacist-intern;

(2) [~~(1)~~] is under the direct supervision of a pharmacist;

(3) [~~(2)~~] has completed the pharmacy's on-site technician training program;

(4) [~~(3)~~] has completed a pharmacist training program in the preparation of sterile pharmaceuticals if the pharmacist-intern is compounding sterile pharmaceuticals; and

(5) [~~(4)~~] is not counted as a pharmacy technician in the ratio of pharmacists to pharmacy technicians. The ratio of pharmacists to pharmacy technicians shall be 1:1 when performing pharmacy technician duties.

(d) (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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Executive Director/Secretary
Texas State Board of Pharmacy
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22 TAC §283.6

The Texas State Board of Pharmacy proposes amendments to §283.6, concerning Preceptor Requirements. These amendments, if adopted, will provide guidelines for pharmacist petitioning the Board for approval to act as a preceptor when individual has been the subject of disciplinary action by the Board within three years of the action.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be the establishment of standards for preceptor training. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended section.

Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amended section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.6. Preceptor Requirements.

(a) - (d) (No change.)

(e) No pharmacist may serve as a preceptor if his or her license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in the Act, §565.051, during the period he or she is serving as a preceptor or within the three-year period immediately preceding application for approval as a preceptor. Provided, however, a pharmacist who has been the subject of such an order of the board may petition the board, in writing, for approval to act as a preceptor. The board may consider the following items in approving a pharmacist's petition to act as a preceptor:

(1) the type and gravity of the offense for which the pharmacist's license was disciplined;

(2) the length of time since the action that caused the order;

(3) the length of time the pharmacist has previously served as a preceptor;

(4) the availability of other preceptors in the area;

(5) the reason(s) the pharmacist believes he/she should serve as a preceptor;

(6) a letter of recommendation from a Texas College of Pharmacy if the pharmacist will be serving as a preceptor for a Texas College of Pharmacy; and

(7) any other factor presented by the pharmacist demonstrating good cause why the pharmacist should be allowed to act as a preceptor.

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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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.20

The Texas State Board of Pharmacy proposes amendments to §291.20, concerning Remote Pharmacy Services. The amendments, if adopted, will make conforming changes in the existing rule to implement the provisions of new Chapter 297, Pharmacy Technicians.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to establish standards for duties performed by pharmacy technicians. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended section.

Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004

The amendments are proposed under §§551.002, 554.051, 554.002, 554.053, and Chapter 568 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569 Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.002(6) as authorizing the agency to regulate the training, qualifications, and employment of a pharmacist-intern and pharmacy technician. The Board interprets §554.053 as authorizing the agency to establish rules for the use and the duties of a pharmacy technician in a pharmacy licensed by the Board. The Board interprets Chapter 568 as authorizing the agency to (1) require pharmacy technicians register with the Board; (2) outline the grounds for refusal to issue or renew a pharmacy technician registration; and (3) adopt fees necessary for the registration of pharmacy technicians.

The statutes affected by the amended section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.20. Remote Pharmacy Services.

(a) Remote pharmacy services using automated pharmacy systems.

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

(4) Operational standards.

(A) - (E) (No change.)

(F) Stocking an automated pharmacy system.

(i) Stocking of drugs in an automated pharmacy system shall be completed by a pharmacist or a registered [~~certified~~] pharmacy technician under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) - (iii) (No change.)

(G) - (H) (No change.)

(5) (No change.)

(b) Remote pharmacy services using emergency medication kits.

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

(4) Operational standards.

(A) - (E) (No change.)

(F) Stocking emergency medication kits.

(i) Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist or registered [~~certified~~] pharmacy technician under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) - (iii) (No change.)

(G) (No change.)

(5) (No change.)

(c) Remote pharmacy services using telepharmacy systems.

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

(4) Operational standards.

(A) - (B) (No change.)

(C) Environment/Security.

(i) - (iii) (No change.)

(iv) Access to the area where drugs are stored at the remote site and operation of the telepharmacy system shall be limited to pharmacists employed by the provider pharmacy or personnel who:

(I) are licensed healthcare providers or registered [~~certified~~] pharmacy technicians;

(II) - (III) (No change.)

(v) - (vi) (No change.)

(D) Prescription dispensing and delivery.

(i) - (vii) (No change.)

(viii) If the remote site has direct access to the provider pharmacy's data processing system, only a pharmacist or a registered [~~certified~~] pharmacy technician may enter prescription information into the data processing system. The original prescription shall be sent to the provider pharmacy and a pharmacist shall verify the accuracy of the data entry.

(ix) Drugs which require reconstitution through the addition of a specified amount of water may be dispensed by the remote site only if a registered [~~certified~~] pharmacy technician or licensed healthcare provider reconstitutes the product.

(E) - (F) (No change.)

(5) (No change.)

(d) (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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Gay Dodson, R.Ph.
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Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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22 TAC §291.22

The Texas State Board of Pharmacy proposes new §291.22, concerning Petition to Establish an Additional Class of Pharmacy. The new section, if adopted, will establish procedures for a person to petition the Board to establish an additional class of pharmacy license.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the section is in effect, there will be no fiscal implications for state government as a result of enforcing or administering the section. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the section will be in effect, the public benefit anticipated as a result of enforcing the section will be to establish procedures for a person to petition the Board to establish an additional class of pharmacy license. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with this section.

Written comments on the proposed new section may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The new section is proposed under §§551.002, 554.051, and 554.053 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the new section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.22. Petition to Establish an Additional Class of Pharmacy.

(a) Purpose. The purpose of this section is to specify the procedures to be followed in petitioning the board to establish an additional class of pharmacy as authorized by §560.053 of the Texas Pharmacy Act (Chapters 551- 566 and 568 - 569, Texas Occupations Code). In reviewing petitions, the board will only consider petitions that provide pharmaceutical care services which contribute to positive patient outcomes. The board will not consider any petition intended only to provide a competitive advantage.

(b) Procedures for petitioning the board to establish an additional class of pharmacy. A person who wishes the board to consider establishing an additional class of pharmacy shall submit to the board a petition for which contains at least the following information:

(1) name, address, telephone number, and pharmacist's license number of the pharmacist responsible for submitting the petition;

(2) a detailed summary of the additional class of pharmacy which includes:

(A) a description of the type of pharmacy and the pharmaceutical care services provided to the public;

(B) if a pharmacy of this type currently exists, the name, address, and license number of the pharmacy;

(C) a full explanation of the reasons:

(i) the existing classifications of pharmacy licenses are not appropriate for this practice setting; and

(ii) that establishment of a new classification of pharmacy license is necessary to protect the public health, safety, and welfare.

(c) Review and approval or denial of the petition.

(1) On receipt of a petition to establish an additional class of pharmacy, board staff shall initially review the petition for completeness and appropriateness. If the petition is incomplete or inappropriate for board consideration for any reason, board staff shall return the petition with a letter of explanation. Such review shall be completed within 30 working days of receipt of the petition.

(2) Once board staff has determined that the petition is complete and appropriate, a task force composed of board staff, at least one board member and, if deemed necessary, resource personnel appointed by the board president, shall review the petition and make a written recommendation to the board regarding approval. Such recommendation shall be presented to the board at the next regularly scheduled meeting of the board that occurs at least three weeks after completion of the review and written recommendation.

(3) A copy of the recommendation shall be provided to the petitioner and the board at least two weeks prior to the board meeting.

(4) Both the petitioner and a representative of the task force shall be given equal time for presentations to the board.

(5) Upon hearing the presentations, the board shall approve or deny the petition. If the board approves the petition, the board shall direct staff to develop rules for the new class of pharmacy or appoint a task force to work with the staff to assist in developing rules for the new class of pharmacy. The board shall approve or deny any petition to establish an additional class of pharmacy not later than the board meeting following the meeting at which the petition is heard.

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 B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.31 - 291.34, 291.36

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions, §291.32, concerning Personnel, §291.33, concerning Operational Standards, §291.34, concerning Records, and §291.36, concerning Pharmacies Compounding Sterile Pharmaceuticals. The amendments, if adopted, will implement the provisions of Senate Bill 939. Senate Bill 939 passed by the 2003 Texas Legislature establishes a ratio of one pharmacist for every five pharmacy technicians in a Class A pharmacy if the Class A pharmacy dispenses not more than 20 different prescription drugs and does not produce intravenous or intramuscular drugs on-site. In addition, the amendments, if adopted will make conforming changes in existing rules to implement the provisions of new Chapter 297, Pharmacy Technicians, correct references to the Texas Pharmacy Act, amend the definition of "dangerous drug," and conform with the provisions of House Bill 1095 which gives physicians the authority to delegate the carrying out or signing of a prescription drug order for a controlled substance to advanced nurse practitioners and physician assistants.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended sections will be to establish a ratio of one pharmacist for every five pharmacy technicians in a Class A pharmacy if the Class A pharmacy dispenses not more than 20 different prescription drugs and does not produce intravenous or intramuscular drugs on-site and will be to establish standards for registered pharmacy technicians. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended sections.

Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §§551.002, 554.051, 554.002, 554.053, and Chapter 568 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.002(6) as authorizing the agency to regulate the training, qualifications, and employment of a pharmacist-intern and pharmacy technician. The Board interprets §554.053 as authorizing the agency to establish rules for the duties of pharmacy technicians in a licensed pharmacy including ratio of pharmacists to pharmacy technicians. The Board interprets Chapter 568 as authorizing the agency to (1) require pharmacy technicians register with the Board; (2) outline the grounds for refusal to issue or renew a pharmacy technician registration; and (3) adopt fees necessary for the registration of pharmacy technicians.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.31. Definitions.

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

(1) (No change.)

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) - (6) (No change.)

(7) Carrying out or signing a prescription drug order--The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas State Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

(A) patient's name and address;

(B) name, strength, and quantity of the drug to be dispensed;

(C) directions for use;

(D) the intended use of the drug, if appropriate;

(E) the name, address, [~~and~~] telephone number, and if the prescription is for a controlled substance, the DEA number of the physician;

(F) the name, address, telephone number, [~~and~~] identification number, and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant completing the prescription drug order;

(G) the date; and

(H) the number of refills permitted.

[~~(8) Certified Pharmacy Technician--A pharmacy technician who:~~]

[~~(A) has completed the pharmacy technician training program of the pharmacy;~~]

[~~(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and~~]

[~~(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.~~]

(8) [~~(9)~~] Component--Any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product.

(9) [~~(10)~~] Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(10) [~~(11)~~] Confidential record--Any health-related record that contains information that identifies an individual and that is

maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(11) [~~(12)~~] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

~~[(13) Dangerous drug--Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:~~

~~[(A) "Caution: federal law prohibits dispensing without prescription"; or]~~

~~[(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."]~~

(13) [~~(14)~~] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(14) [~~(15)~~] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) [~~(16)~~] Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(16) [~~(17)~~] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) [~~(18)~~] Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(18) [~~(19)~~] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(19) [~~(20)~~] Downtime--Period of time during which a data processing system is not operable.

(20) [~~(21)~~] Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(21) [~~(22)~~] Electronic prescription drug order--A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(22) [~~(23)~~] Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(23) [~~(24)~~] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(24) [~~(25)~~] Hard copy--A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(25) [~~(26)~~] Manufacturing--The production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons but does not include compounding.

(26) [~~(27)~~] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(27) [~~(28)~~] Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(28) [~~(29)~~] New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(29) [~~(30)~~] Original prescription--The:

(A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(30) [~~(31)~~] Part-time pharmacist--A pharmacist who works less than full-time.

(31) [~~(32)~~] Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(32) [~~(33)~~] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(33) [~~(34)~~] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(34) Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.

(35) Pharmacy technician trainee--A person who is not registered as a pharmacy technician by the board and is either:

(A) participating in a pharmacy's technician training program; or

(B) currently enrolled in a:

(i) pharmacy technician training program accredited by the American Society of Health-System Pharmacists; or

(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.

[~~(35) Pharmacy technician--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.~~]

[~~(36) Pharmacy technician trainee--A pharmacy technician:~~

[~~(A) participating in a pharmacy's technician training program; or~~]

[~~(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:~~]

[~~(i)~~ the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;]

[~~(ii)~~ the person is under the direct supervision of and responsible to a pharmacist; and]

[~~(iii)~~ the supervising pharmacist conducts in-process and final checks.]

(36) [~~(37)~~] Physician assistant--A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas State Board of Medical Examiners.

(37) [~~(38)~~] Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this subtitle;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under §§157.0511, 157.052, 157.053, 157.054, 157.0541, or 157.0542.

[~~(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;~~]

[~~(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or~~]

[~~(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;~~]

[~~(D) does not include a person licensed under the Texas Pharmacy Act.~~]

(38) [~~(39)~~] Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(39) [~~(40)~~] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(40) [~~(41)~~] Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(41) [~~(42)~~] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(42) [~~(43)~~] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(43) [~~(44)~~] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act.

§291.32. Personnel.

(a) - (c) (No change.)

(d) Pharmacy Technicians.

(1) General.

(A) On June 1, 2004, all persons employed as pharmacy technicians shall be either registered pharmacy technicians or pharmacy technician trainees as follows.

(i) All persons who have passed the required pharmacy technician certification examination shall be registered with the board under the provisions this section.

(ii) All persons who have not taken and passed the required pharmacy certification examination may be designated pharmacy technician trainees, if qualified under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).

(B) Between January 1, 2004, and May 31, 2004, all persons employed as pharmacy technicians who are qualified for registration by the board shall register according to the schedule designated by the board. Between January 1, 2004 and May 31, 2004, persons who are awaiting their scheduled time for registration and persons who have applied for registration, but the registration has not been completed shall comply with the rules in effect prior to January 1, 2004, relating to requirements and duties for certified pharmacy technicians.

(C) All pharmacy technicians shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician Training).

[~~(1) Qualifications~~]

[~~(A) General. All pharmacy technicians shall:~~]

[~~(i)~~ ~~have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and~~]

[~~(ii)~~ ~~complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.~~]

[~~(iii)~~ ~~Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.~~]

[~~(B) Pharmacy Technician Trainee.~~]

[~~(i)~~ ~~A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.~~]

[~~(ii)~~ ~~A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.~~]

[~~(iii)~~ ~~Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:~~]

[~~(I)~~ ~~the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:~~]

[~~(-a-) partial semester breaks such as spring breaks;~~]

[~~(-b-) between semesters; and~~]

[~~(-c-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;~~]

[~~(II)~~ ~~the individual is under the direct supervision of and responsible to a pharmacist; and~~]

[~~(III)~~ ~~the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.~~]

[~~(C) Certified Pharmacy Technicians.~~]

[~~(i)~~ ~~All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.~~]

[~~(ii)~~ ~~A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.~~]

(2) Duties.

(A) Pharmacy technicians may not perform any of the duties listed in subsection (c)(2) [~~(b)(2)~~] of this section.

(B) A pharmacist may delegate to pharmacy technicians any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(i) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians;

(ii) pharmacy technicians are under the direct supervision of and responsible to a pharmacist; and

(iii) [~~effective September 1, 2000,~~] only pharmacy technicians who have been properly trained on the use of an automated pharmacy dispensing system and can demonstrate comprehensive knowledge of the written policies and procedures for the operation of the system may be allowed access to the system; and

(C) Pharmacy technicians may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, including but not limited to the following:

(i) initiating and receiving refill authorization requests;

(ii) entering prescription data into a data processing system;

(iii) taking a stock bottle from the shelf for a prescription;

(iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(v) affixing prescription labels and auxiliary labels to the prescription container provided the pharmacy technician:

(I) [the pharmacy technician] has completed the education and training requirements outlined in §297.6 of this title (relating to relating to Pharmacy Technician Training) [paragraphs (1) and (4) of this subsection]; and

(II) is registered as a pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements) [effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container].

(vi) reconstituting medications;

(vii) prepackaging and labeling prepackaged drugs;

(viii) loading bulk unlabeled drugs into an automated dispensing system provided a pharmacist verifies that the system is properly loaded prior to use;

(ix) compounding non-sterile prescription drug orders; and

(x) bulk compounding.

(3) Ratio of pharmacist to pharmacy technicians.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, the ratio of pharmacists to pharmacy technicians may not exceed 1:2.

(B) The ratio of pharmacists to pharmacy technicians may be 1:3, provided at least one of the three pharmacy technicians is a registered pharmacy technician.

(C) As specified in §568.006 of the Act, a pharmacy that primarily compounds non-sterile pharmaceuticals may have a ratio of pharmacists to pharmacy technicians of 1:5 provided:

(i) the pharmacy:

(I) dispenses no more than 20 different prescription drugs; and

(II) does not produce sterile pharmaceuticals including intravenous or intramuscular drugs on-site; and

(ii) the following conditions are met:

(I) all of the pharmacy technicians are registered pharmacy technicians; and

(II) The pharmacy has written policies and procedures regarding the supervision of pharmacy technicians, including requirements that the registered pharmacy technicians included in a 1:5 ratio may be involved only in one process at a time. For example, a technician who is compounding non-sterile pharmaceuticals may not also call physicians for authorization of refills.

[(A) The ratio of pharmacists to pharmacy technicians may not exceed 1:2]

[(B) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is certified.]

[(4) Training.]

[(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual. Such training:]

[(i) shall include training and experience as outlined in paragraph (5) of this subsection; and]

[(ii) may not be transferred to another pharmacy unless:]

[(I) the pharmacies are under common ownership and control and have a common training program; and]

[(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.]

[(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:]

[(i) may perform all of the duties of a pharmacy technician except affix a label to a prescription container;]

[(ii) may be designated a pharmacy technician trainee for no longer than one year except as specified in paragraph (1)(B) of this subsection; and]

[(iii) shall be counted in the pharmacist to pharmacy technician ratio.]

[(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.]

[(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:]

[(i) name of the person receiving the training;]

[(ii) date(s) of the training;]

[(iii) general description of the topics covered;]

[(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;]

[(v) name of the person supervising the training; and]

[(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.]

[(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency.

Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.]

[(5) Training program. Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:]

[(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:]

[(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and]

[(ii) specify duties which may and may not be performed by pharmacy technicians; and]

[(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:]

[(i) Orientation;]

[(ii) Job descriptions;]

[(iii) Communication techniques;]

[(iv) Laws and rules;]

[(v) Security and safety;]

[(vi) Prescription drugs:]

[(I) Basic pharmaceutical nomenclature;]

[(II) Dosage forms;]

[(vii) Prescription drug orders:]

[(I) Prescribers;]

[(II) Directions for use;]

[(III) Commonly-used abbreviations and symbols;]

[(IV) Number of dosage units;]

[(V) Strengths and systems of measurement;]

[(VI) Routes of administration;]

[(VII) Frequency of administration;]

[(VIII) Interpreting directions for use;]

[(viii) Prescription drug order preparation:]

[(I) Creating or updating patient medication records;]

[(II) Entering prescription drug order information into the computer or typing the label in a manual system;]

[(III) Selecting the correct stock bottle;]

[(IV) Accurately counting or pouring the appropriate quantity of drug product;]

[(V) Selecting the proper container;]

[(VI) Affixing the prescription label;]

[(VII) Affixing auxiliary labels, if indicated; and]

[(VIII) Preparing the finished product for inspection and final check by pharmacists;]

[(ix) Other functions;]

[(x) Drug product prepackaging;]

[(xi) Compounding of non-sterile pharmaceuticals;]

[(xii) Written policy and guidelines for use of and supervision of pharmacy technicians.]

(e) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee a registered pharmacy technician, [pharmacy technician,] or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

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

§291.33. Operational Standards.

(a) (No change.)

(b) Environment.

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

(4) Temporary absence of pharmacist.

(A) If a pharmacy is staffed by a single pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians and other pharmacy personnel from the prescription department provided the following conditions are met:

(i) at least one registered [certified] pharmacy technician remains in the prescription department;

(ii) - (v) (No change.)

(B) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(i) - (iv) (No change.)

(v) affixing prescription labels and auxiliary labels to the prescription container provided the pharmacy technician: [. After January 1, 2001, only certified pharmacy technicians may affix prescription labels to prescription containers; and]

(I) has completed the training requirements outlined in §297.6 of this title (relating to relating to Pharmacy Technician Training); and

(II) is registered as a pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements); and

(vi) (No change.)

(C) - (E) (No change.)

(F) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered [certified] pharmacy technician and may perform only the duties of a registered [certified] pharmacy technician.

(G) (No change.)

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) - (D) (No change.)

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) (No change.)

(ii) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours in a 24 hour period, and provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(iii) - (iv) (No change.)

(F) - (G) (No change.)

(2) - (7) (No change.)

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

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

(1) (No change.)

(2) Written prescription drug orders.

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

(D) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(i) A pharmacist may dispense a prescription drug order for a [~~dangerous drug~~] which is carried out or signed by an advanced practice nurse or physician assistant provided[~~:~~]

[~~(I)~~ ~~the prescription is for a dangerous drug and not for a controlled substance; and~~]

[~~(II)~~] the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(ii) (No change.)

(E) (No change.)

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

(6) Prescription drug order information.

(A) - (B) (No change.)

(C) All original written prescriptions for dangerous drugs carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(i) name and address of the patient;

(ii) name, address, [~~and~~] telephone number and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(iii) name, identification number, [~~and~~] original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;

(v) name, strength, and quantity of the dangerous drug;

(vi) directions for use;

(vii) indications for use, if appropriate;

(viii) date of issuance; and

(ix) number of refills authorized.

(D) (No change.)

(7) (No change.)

(c) - (k) (No change.)

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) (No change.)

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

(1) (No change.)

(2) Act--The Texas Pharmacy Act, Chapter 551 - 566 and 568 - 569 [~~556~~], Occupations Code, as amended.

(3) - (11) (No change.)

(12) Carrying out or signing a prescription drug order-The completion of a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the Texas State Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription:

(A) patient's name and address;

(B) name, strength, and quantity of the drug to be dispensed;

(C) directions for use;

(D) the intended use of the drug, if appropriate;

(E) the name, address, [~~and~~] telephone number, and the prescription is for a controlled substance, the DEA number of the physician;

(F) the name, address, telephone number, [~~and~~] identification number, and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant completing the prescription drug order;

(G) the date; and

(H) the number of refills permitted.

~~[(13) Certified Pharmacy Technician--A pharmacy technician who:]~~

~~[(A) has completed the pharmacy technician training program of the pharmacy;]~~

~~[(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and]~~

~~[(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.]~~

(13) [~~(14)~~] Clean room--A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(14) [~~(15)~~] Clean zone--A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(15) [~~(16)~~] Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(16) [~~(17)~~] Confidential record--Any health related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication drug order.

(17) [~~(18)~~] Controlled area--A controlled area is the area designated for preparing sterile pharmaceuticals.

(18) [~~(19)~~] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(19) [~~(20)~~] Critical areas--Any area in the controlled area where products or containers are exposed to the environment.

(20) [~~(21)~~] Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(21) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

~~[(22) Dangerous drug--Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:]~~

~~[(A) "Caution: federal law prohibits dispensing without prescription"; or]~~

~~[(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."]~~

(22) [~~(23)~~] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(23) [~~(24)~~] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(24) [~~(25)~~] Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(25) [~~(26)~~] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(26) [~~(27)~~] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(27) [~~(28)~~] Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(28) [~~(29)~~] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(29) [~~(30)~~] Downtime--Period of time during which a data processing system is not operable.

(30) [~~(31)~~] Drug regimen review--An evaluation of prescription drug or medication orders and patient medication records for:

(A) known allergies;

(B) rational therapy--contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(31) [~~(32)~~] Electronic prescription drug order--A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(32) [~~(33)~~] Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(33) [~~(34)~~] Expiration date--The date (and time, when applicable) beyond which a product should not be used.

(34) [~~(35)~~] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(35) [~~(36)~~] Hard copy--A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(36) [~~(37)~~] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(37) [~~(38)~~] New prescription drug order--A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(38) [~~(39)~~] Original prescription--The:

(A) original written prescription drug orders; or

(B) original verbal or electronic prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(39) [~~(40)~~] Part-time pharmacist--A pharmacist who works less than full-time.

(40) [~~(41)~~] Patient counseling--Communication by the pharmacist of information to the patient or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(41) [~~(42)~~] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(42) [~~(43)~~] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(43) Pharmacy technicians--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.

(44) Pharmacy technician trainee--A person who is not registered as a pharmacy technician by the board and is either:

(A) participating in a pharmacy's technician training program; or

(B) currently enrolled in a:

(i) pharmacy technician training program accredited by the American Society of Health-System Pharmacists; or

(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.

[~~(44) Pharmacy technicians--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.~~]

[~~(45) Pharmacy technician trainee--a pharmacy technician:~~]

[~~(A) participating in a pharmacy's technician training program; or~~]

[~~(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:~~]

[~~*(i)* the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;~~]

[~~*(ii)* the person is under the direct supervision of and responsible to a pharmacist; and~~]

[~~*(iii)* the supervising pharmacist conducts in-process and final checks.~~]

(45) [~~(46)~~] Physician assistant--A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas State Board of Medical Examiners.

(46) [~~(47)~~] Practitioner--

(A) A person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this subtitle;

(B) A person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) A person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) An advanced practice nurse or physician assistant to whom a physician has delegated the authority to carry out or sign prescription drug orders under §§157.0511, 157.052, 157.053, 157.054, 157.0541, or 157.0542.

~~[(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;]~~

~~[(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or]~~

~~[(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;]~~

~~[(D) does not include a person licensed under the Texas Pharmacy Act.]~~

(47) [~~(48)~~] Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(48) [~~(49)~~] Prescription drug--

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(49) [~~(50)~~] Prescription drug order--

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order pursuant to the Subtitle B, Chapter 157, Occupations Code.

(50) [~~(51)~~] Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(51) [~~(52)~~] Quality assurance--The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(52) [~~(53)~~] Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(53) [~~(54)~~] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(54) [~~(55)~~] State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(55) [~~(56)~~] Sterile pharmaceutical--A dosage form free from living micro-organisms.

(56) [~~(57)~~] Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(57) [~~(58)~~] Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(58) [~~(59)~~] Unusable drugs--Drugs or devices that are unusable for reasons such as they are adulterated, misbranded, expired, defective, or recalled.

(59) [~~(60)~~] Written protocol--A physicians order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act.

(c) Personnel.

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

(4) Pharmacy technicians.

(A) General.

(i) On June 1, 2004, all persons employed as pharmacy technicians shall be either registered pharmacy technicians or pharmacy technician trainees as follows.

(I) All persons who have passed the required pharmacy technician certification examination shall be registered with the board under the provisions this section.

(II) All persons who have not taken and passed the required pharmacy certification examination may be designated pharmacy technician trainees, if qualified under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).

(ii) Between January 1, 2004, and May 31, 2004, all persons employed as pharmacy technicians who are qualified for registration by the board shall register according to the schedule designated by the board. Between January 1, 2004 and May 31, 2004, persons who are awaiting their scheduled time for registration and persons who have applied for registration, but the registration has not been completed shall comply with the rules in effect prior to January 1, 2004, relating to requirements and duties for certified pharmacy technicians.

(iii) All pharmacy technicians shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician Training).

~~[(A) Qualifications.]~~

~~*[(i)* General. All pharmacy technicians shall:]~~

~~*[(I)* have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and]~~

~~*[(II)* complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in subparagraph (D) of this paragraph.]~~

~~*[(III)* Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.]~~

[(ii) Pharmacy Technician Trainee.]

[(I) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.]

[(II) A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This subclause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.]

[(III) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:]

[(-a-) the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:]

[(-1-) partial semester breaks such as spring breaks;]

[(-2-) between semesters; and]

[(-3-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;]

[(-b-) the individual is under the direct supervision of and responsible to a pharmacist; and]

[(-c-) the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.]

[(iii) Certified Pharmacy Technicians.]

[(I) All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.]

[(II) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.]

(B) Duties.

(i) - (ii) (No change.)

(iii) Pharmacy technicians may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, including but not limited to the following.

(I) - (IV) (No change.)

(V) affixing prescription labels and auxiliary labels to the prescription container provided the pharmacy technician:

(-a-) [the pharmacy technician] has completed the [education and] training requirements outlined in §297.6 of this title (relating to relating to Pharmacy Technician Training) [subparagraphs (A) and (D) of this paragraph]; and

(-b-) is registered as pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements) [effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.]

(VI) - (VIII) (No change.)

(IX) compounding sterile pharmaceuticals provided the pharmacy technician:

(-a-) is registered as a pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements);

(-b-) has completed the training specified in paragraph (4) of this subsection; and

(-c-) is supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection who conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.

[(-a-) the pharmacy technician has completed the education and training specified in paragraph (4) of this subsection and the pharmacy technician is supervised by a pharmacist who has completed the training specified paragraph (4) of this subsection; and]

[(-b-) effective January 1, 2001, the pharmacy technicians]:

[(-1-) are either certified pharmacy technicians or technician trainees;]

[(-2-) have completed the training specified in paragraph (4) of this subsection;]

[(-3-) are supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.]

(X) - (XI) (No change.)

[(iv) Certified pharmacy technicians. Effective January 1, 2001, only certified pharmacy technicians may:]

[(I) affix a label to a prescription container; and

]

[(II) compound sterile pharmaceuticals.]

(C) Ratio of pharmacist to pharmacy technicians.

(i) The ratio of pharmacists to pharmacy technicians may not exceed 1:2 provided that only one pharmacy technician may be engaged in the compounding of sterile pharmaceuticals.

(ii) The ratio of pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is a registered pharmacy technician [certified] and only one may be engaged in the compounding of sterile pharmaceuticals.

[(D) Training.]

[(i) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual which includes training and experience as outlined in subparagraph (E) of this paragraph prior to the regular performance of their duties. Such training:]

[(I) shall include training and experience as outlined in subparagraph (E) of this paragraph; and]

[(II) may not be transferred to another pharmacy unless:]

[(-a-) the pharmacies are under common ownership and control and have a common training program; and]

[(-b-) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.]

[(ii) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:]

[(I) may perform all of the duties of a pharmacy technician except affix a label to a prescription;]

[(II) may be designated a pharmacy technician trainee for no longer than one year except as specified in subparagraph (A)(ii) of this paragraph; and]

[(III) shall be counted in the pharmacist to pharmacy technician ratio.]

[(iii) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.]

[(iv) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:]

[(I) name of the person receiving the training;]

[(II) date(s) of the training;]

[(III) general description of the topics covered;]

[(IV) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;]

[(V) name of the person supervising the training; and]

[(VI) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.]

[(v) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.]

[(E) Training program. Pharmacy technicians training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:]

[(i) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:]

[(I) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, task and functions performed by such personnel; and]

[(II) specify duties which may and may not be performed by pharmacy technicians; and]

[(ii) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:]

[(I) Orientation;]

[(II) Job descriptions;]

[(III) Communication techniques;]

[(IV) Laws and rules;]

[(V) Security and safety;]

[(VI) Prescription drugs:]
[(-a-) Basic pharmaceutical nomenclature;]
[(-b-) Dosage forms;]

[(VII) Prescription drug orders:]
[(-a-) Prescribers;]
[(-b-) Directions for use;]
[(-c-) Commonly-used abbreviations and symbols;]
[(-d-) Number of dosage units;]
[(-e-) Strength and systems of measurement;]
[(-f-) Route of administration;]
[(-g-) Frequency of administration;]
[(-h-) Interpreting directions for use;]

[(VIII) Prescription drug order preparation:]
[(-a-) Creating or updating patient medication records;]
[(-b-) Entering prescription drug order information into the computer or typing the label in a manual system;]
[(-c-) Selecting the correct stock bottle;]
[(-d-) Accurately counting or pouring the appropriate quantity of drug product;]
[(-e-) Selecting the proper container;]
[(-f-) Affixing the prescription label;]
[(-g-) Affixing auxiliary labels, if indicated; and]
[(-h-) Preparing the finished product for inspection and final check by pharmacists;]

[(IX) Other functions;]

[(X) Drug product prepackaging;]

[(XI) Compounding of non-sterile pharmaceuticals;]

[(XII) Written policy and guidelines for use of and supervision of pharmacy technicians.]

(5) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) - (B) (No change.)

(C) Pharmacy technicians. In addition to the qualifications and training outlined in paragraph (3) of this subsection, all pharmacy technicians who compound sterile pharmaceuticals shall:

(i) - (ii) (No change.)

[(iii) on January 1, 2001, discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in clause (ii) of this subparagraph.]

(iii) [~~(iv)~~] acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) (No change.)

(6) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee a registered pharmacy technician, [~~pharmacy technician,~~] or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

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

(d) Operational standards.

(1) (No change.)

(2) Environment.

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

(D) Temporary absence of pharmacist.

(i) If a pharmacy is staffed by a single pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one registered [~~certified~~] pharmacy technician remains in the prescription department;

(II) - (V) (No change.)

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) - (IV) (No change.)

(V) affixing prescription labels and auxiliary labels to the prescription container. provided the pharmacy technician: [~~After January 1, 2001, only certified pharmacy technicians may affix prescription labels to prescription containers; and~~]

(-a-) has completed the training requirements outlined in §297.6 of this title (relating to relating to Pharmacy Technician Training); and

(-b-) is registered as a pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements); and

(VI) (No change.)

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

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered [~~certified~~] pharmacy technician and may perform only the duties of a registered [~~certified~~] pharmacy technician.

(vii) (No change.)

(3) - (9) (No change.)

(e) Records.

(1) (No change.)

(2) Prescriptions.

(A) (No change.)

(B) Written prescription drug orders.

(i) - (iii) (No change.)

(iv) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(I) A pharmacist may dispense a prescription drug order for a [~~dangerous drug~~] which is carried out or signed by an advanced practice nurse or physician assistant provided[~~:~~]

[~~(-a-) the prescription is for a dangerous drug and not for a controlled substance; and~~]

[~~(-b-)~~] ~~the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.~~

(II) (No change.)

(v) (No change.)

(C) - (E) (No change.)

(F) Prescription drug order information.

(i) (No change.)

(ii) All original prescriptions for dangerous drugs carried out by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(I) name and address of the patient;

(II) name, address, [~~and~~] telephone number and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(III) name, address, telephone number, identification number, [~~and~~] original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(IV) name, strength, and quantity of the dangerous drug;

(V) directions for use;

(VI) the intended use of the drug, if appropriate;

(VII) date of issuance; and

(VIII) number of refills authorized.

(iii) (No change.)

(G) (No change.)

(3) - (11) (No change.)

(f) (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.

Filed with the Office of the Secretary of State on December 15, 2003.

TRD-200308584

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 305-8028

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.52, §291.53

The Texas State Board of Pharmacy proposes amendments to §291.52, concerning Definitions and §291.53, concerning Personnel in a Class B (Nuclear) Pharmacy. The amendments to §291.52 and §291.53, if adopted, will make conforming changes in existing rules to implement the provisions of new Chapter 297, Pharmacy Technicians. In addition, the amendments, if adopted, will correct references to the Texas Pharmacy Act, and amend the definition of "dangerous drug."

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended sections will be to establish standards for registered pharmacy technicians. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended sections.

Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §551.002 and §554.051(a) of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.52. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §551.003.

(1) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(2) - (10) (No change.)

~~[(11) Certified Pharmacy Technician--A pharmacy technician who:]~~

~~[(A) has completed the pharmacy technician training program of the pharmacy;]~~

~~[(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and]~~

~~[(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.]~~

(11) [~~(12)~~] Class B pharmacy license or nuclear pharmacy license--A license issued to a pharmacy dispensing or providing radioactive drugs or devices for administration to an ultimate user.

(12) [~~(13)~~] Clean room--A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(13) [~~(14)~~] Clean zone--A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(14) [~~(15)~~] Controlled area--A controlled area is the area designated for preparing sterile radiopharmaceuticals.

(15) [~~(16)~~] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(16) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

~~[(17) Dangerous drug--A device, drug, or radioactive drug that is unsafe for self medication and that is not included in Penalty Groups I through IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device, drug, or radiopharmaceutical that bears or is required to bear the legend:]~~

~~[(A) "Caution: Federal Law Prohibits Dispensing Without a Prescription" or "Rx only" or another legend that complies with federal law; or]~~

~~[(B) "Caution: Federal Law Restricts This Drug To Be Used By or on the Order of a Licensed Veterinarian."]~~

(17) [~~(18)~~] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(18) [~~(19)~~] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(19) [~~(20)~~] Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates radioactive prescription drug orders to a pharmacist; or

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a radioactive prescription drug order.

(20) [~~(21)~~] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(21) [~~(22)~~] Diagnostic prescription drug order--A radioactive prescription drug order issued for a diagnostic purpose.

(22) [~~(23)~~] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(23) [~~(24)~~] Dispensing pharmacist--The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(24) [~~(25)~~] Distribute--The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(25) [~~(26)~~] Electronic radioactive prescription drug order--A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(26) [~~(27)~~] Internal test assessment--Validation of tests for quality control necessary to insure the integrity of the test.

(27) [~~(28)~~] Nuclear pharmacy technique--The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(28) [~~(29)~~] Original prescription--The:

(A) original written radioactive prescription drug orders; or

(B) original verbal or electronic radioactive prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(29) [~~(30)~~] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(30) Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.

(31) Pharmacy technician trainee--A person who is not registered as a pharmacy technician by the board and is either:

(A) participating in a pharmacy's technician training program; or

(B) currently enrolled in a:

(i) pharmacy technician training program accredited by the American Society of Health-System Pharmacists; or

(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.

[~~(31) Pharmacy technician--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs or radiopharmaceuticals under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.~~]

[~~(32) Pharmacy technician trainee--A pharmacy technician:~~]

[~~(A) participating in a pharmacy's technician training program; or~~]

[~~(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:~~]

[~~(i)~~ ~~the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;~~]

[~~(ii)~~ ~~the person is under the direct supervision of and responsible to a pharmacist; and~~]

[~~(iii)~~ ~~the supervising pharmacist conducts in-process and final checks.~~]

(32) [~~(33)~~] Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(33) [~~(34)~~] Radiopharmaceutical--A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

(34) [~~(35)~~] Radioactive drug quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final radiopharmaceutical prepared meets predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility and the interpretation of the resulting data in order to determine the feasibility for use in humans and animals including internal test assessment, authentication of product history, and the keeping of mandatory records.

(35) [~~(36)~~] Radioactive drug service--The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(36) [~~(37)~~] Radioactive prescription drug order--An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(37) [~~(38)~~] Sterile radiopharmaceutical--A dosage form of a radiopharmaceutical free from living micro-organisms.

(38) [~~(39)~~] Therapeutic prescription drug order--A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(39) [~~(40)~~] Ultimate user--A person who has obtained and possesses a prescription drug or radiopharmaceutical for his or her own use or for the use of a member of his or her household.

§291.53. Personnel.

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

(c) Pharmacy Technicians.

(1) General.

(A) On June 1, 2004, all persons employed as pharmacy technicians must be either registered pharmacy technicians or pharmacy technician trainees as follows.

(i) All persons who have passed the required pharmacy technician certification examination must be registered with the board under the provisions this section.

(ii) All persons who have not taken and passed the required pharmacy certification examination shall be designated pharmacy technician trainees under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).

(B) Between January 1, 2004, and May 31, 2004, all persons employed as pharmacy technicians who are qualified for registration by the board shall register according to the schedule designated by the board. Between January 1, 2004 and May 31, 2004, persons who are awaiting their scheduled time for registration and persons who have applied for registration, but the registration has not been completed shall comply with the rules in effect prior to January 1, 2004, relating to requirements and duties for certified pharmacy technicians.

(C) All pharmacy technicians shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician Training).

[(A) Pharmacy technicians in a nuclear pharmacy shall possess sufficient education and training to qualify such individual to perform assigned tasks including nuclear pharmacy techniques.]

[(B) The pharmacist-in-charge shall document the training and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:]

[(i) name of the person receiving the training;]

[(ii) date(s) of the training;]

[(iii) general description of the topics covered;]

[(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;]

[(v) name of the person supervising the training; and]

[(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.]

[(C) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:]

[(i) may perform all of the duties of a pharmacy technician except affixing a label to a prescription container and routinely compounding sterile radiopharmaceuticals;]

[(ii) may be designated a pharmacy technician trainee for no longer than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists; and]

[(iii) shall be counted in the pharmacist to pharmacy technician ratio.]

[(D) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.]

[(E) Effective January 1, 2001, all pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.]

[(F) All certified pharmacy technicians shall maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.]

[(G) A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician.]

(2) Duties.

(A) (No change.)

(B) Labeling. Only registered [Effective January 1, 2001, only certified] pharmacy technicians may affix a label to a prescription container.

(3) Ratio of authorized nuclear pharmacist to pharmacy technicians.

(A) (No change.)

(B) The ratio of authorized nuclear pharmacists to pharmacy technicians may be 1:3 provided that at least one of the three technicians is a registered pharmacy technician [certified] and only one may be engaged in the compounding of a sterile radiopharmaceutical.

(d) (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.

Filed with the Office of the Secretary of State on December 15, 2003.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 305-8028

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §§291.72, 291.73, 291.76

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions, §291.73, concerning Personnel in a Class C (Institutional) Pharmacy and §291.76, concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. The amendments to §§291.72, 291.73 and 291.76,

if adopted, will make conforming changes in existing rules to implement the provisions of new Chapter 297, Pharmacy Technicians. In addition, the amendments, if adopted will correct references to the Texas Pharmacy Act, amend the definition of "dangerous drug," and conform with the provisions of House Bill 1095 which gives physicians the authority to delegate the carrying out or signing of a prescription drug order for a controlled substance to advanced nurse practitioners and physician assistants.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended sections will be to establish standards for registered pharmacy technicians. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended sections.

Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §551.002 and §554.051(a) of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.72. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Occupations Code, as amended.

(3) - (10) (No change.)

[(11) Certified Pharmacy Technician--A pharmacy technician who:]

[(A) has completed the pharmacy technician training program of the pharmacy;]

[(B) has taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board; and]

[(C) maintains a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.]

(11) [(12)] Clean room--A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E et seq.

(12) [(13)] Clean zone--A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(13) [(14)] Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(14) [(15)] Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication drug order.

(15) [(16)] Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the facility in areas that pertain to the practice of pharmacy.

(16) [(17)] Controlled area--A controlled area is the area designated for preparing sterile pharmaceuticals.

(17) [(18)] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(18) [(19)] Critical areas--Any area in the controlled area where products or containers are exposed to the environment.

(19) [(20)] Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(20) Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

[(21) Dangerous drug--Any drug or device that is not included in Penalty Groups 1-4 of the controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:]

[(A) "Caution: federal law prohibits dispensing without prescription"; or]

[(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."]

(21) [(22)] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(22) [~~(23)~~] Direct copy--Electronic copy or carbonized copy of a medication order, including a facsimile (FAX), tele-autograph, or a copy transmitted between computers.

(23) [~~(24)~~] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(24) [~~(25)~~] Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(25) [~~(26)~~] Distributing pharmacist--The pharmacist who checks the medication order prior to distribution.

(26) [~~(27)~~] Downtime--Period of time during which a data processing system is not operable.

(27) [~~(28)~~] Drug regimen review--

(A) An evaluation of medication orders and patient medication records for:

(i) known allergies;

(ii) rational therapy--contraindications;

(iii) reasonable dose and route of administration;

(iv) reasonable directions for use;

(v) duplication of therapy;

(vi) drug-drug interactions;

(vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions; and

(x) proper utilization, including overutilization or underutilization.

(B) The drug regimen review may be conducted prior to administration of the first dose (prospective) or after administration of the first dose (retrospective).

(28) [~~(29)~~] Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(29) [~~(30)~~] Expiration date--The date (and time, when applicable) beyond which a product should not be used.

(30) [~~(31)~~] Facility--

(A) a hospital or other in-patient facility that is licensed under chapter 241 or 577, Health and Safety code;

(B) a hospice in-patient facility that is licensed under Chapter 142, Health and Safety Code;

(C) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code; or

(D) a hospital maintained or operated by the state.

(31) [~~(32)~~] Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other hospital department (excluding the pharmacy) for the purpose of administration to a patient of the facility.

(32) [~~(33)~~] Formulary--List of drugs approved for use in the facility by the committee which performs the pharmacy and therapeutics function for the facility.

(33) [~~(34)~~] Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(34) [~~(35)~~] Hard copy--A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc).

(35) [~~(36)~~] Inpatient--A person who is duly admitted to the licensed hospital, or other hospital or facility maintained or operated by the state, or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility which is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility. An inpatient includes a person confined in any correctional institution operated by the state of Texas.

(36) [~~(37)~~] Institutional pharmacy--Area or areas in a facility where drugs are stored, bulk compounded, delivered, compounded, dispensed, and distributed to other areas or departments of the facility, or dispensed to an ultimate user or his or her agent.

(37) [~~(38)~~] Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Food and Drug Administration.

(38) [~~(39)~~] Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(39) [~~(40)~~] Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(40) [~~(41)~~] Part-time pharmacist--A pharmacist either employed or under contract, who routinely works less than full-time.

(41) [~~(42)~~] Perpetual inventory--An inventory which documents all receipts and distributions of a drug product, such that an accurate, current balance of the amount of the drug product present in the pharmacy is indicated.

(42) [~~(43)~~] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(43) [~~(44)~~] Pharmacist-in-charge--Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(44) [~~(45)~~] Pharmacy and therapeutics function--Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(45) Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require

professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.

(46) Pharmacy technician trainee--A person who is:

(A) not registered as a pharmacy technician by the board, and either:

(B) participating in a pharmacy's technician training program; or

(C) currently enrolled in a:

(i) pharmacy technician training program accredited by the American Society of Health-System Pharmacists; or

(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.

[(46) Pharmacy technician--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.]

[(47) Pharmacy technician trainee--A pharmacy technician:

[(A) participating in a pharmacy's technician training program; or]

[(B) a person currently enrolled in a technician training program accredited by the American Society of Health-System Pharmacists provided:]

[(i) the person is working during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;]

[(ii) the person is under the direct supervision of and responsible to a pharmacist; and]

[(iii) the supervising pharmacist conducts in-process and final checks.]

(47) [(48)] Pre-packaging--The act of re-packaging and re-labeling quantities of drug products from a manufacturer's original container into unit-dose packaging or a multiple dose container for distribution within the facility.

(48) [(49)] Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(49) [(50)] Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(50) [(51)] Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(51) [(52)] Quality assurance--The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(52) [(53)] Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(53) [(54)] Sample--A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(54) [(55)] Sterile pharmaceutical--A dosage form free from living micro-organisms.

(55) [(56)] Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(56) [(57)] Unit-dose packaging--The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(57) [(58)] Unusable drugs--Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(58) [(59)] Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act Subtitle B, Chapter 157, Occupations Code.

§291.73. Personnel.

(a) - (d) (No change.)

(e) Pharmacy technicians.

(1) General.

(A) On June 1, 2004, all persons employed as pharmacy technicians must be either registered pharmacy technicians or pharmacy technician trainees as follows.

(i) All persons who have passed the required pharmacy technician certification examination must be registered with the board under the provisions this section.

(ii) All persons who have not taken and passed the required pharmacy certification examination shall be designated pharmacy technician trainees under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).

(B) Between January 1, 2004, and May 31, 2004, all persons employed as pharmacy technicians who are qualified for registration by the board shall register according to the schedule designated by the board. Between January 1, 2004 and May 31, 2004, persons who are awaiting their scheduled time for registration and persons who

have applied for registration, but the registration has not been completed shall comply with the rules in effect prior to January 1, 2004, relating to requirements and duties for certified pharmacy technicians.

(C) All pharmacy technicians shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician Training).

~~[(1) Qualifications.]~~

~~[(A) General.]~~

~~*[(i)* All pharmacy technicians shall:]~~

~~*[(I)* have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and]~~

~~*[(II)* complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.]~~

~~*[(III)* Effective January 1, 2001, all pharmacy technicians must have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board or be a pharmacy technician trainee.]~~

~~*[(ii)* For the purpose of this section, pharmacy technicians are those persons who perform nonjudgmental technical duties associated with the distribution of a medication drug order.]~~

~~[(B) Pharmacy Technician Trainee.]~~

~~*[(i)* A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board.]~~

~~*[(ii)* A person may be designated a pharmacy technician trainee for no more than one year. A person may not be a technician trainee if they fail to pass the certification exam within this one year training period. This clause does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.]~~

~~*[(iii)* Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided:]~~

~~*[(I)* the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:]~~

~~[(-a-) partial semester breaks such as spring breaks;]~~

~~[(-b-) between semesters; and]~~

~~[(-c-) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester;]~~

~~*[(II)* the individual is under the direct supervision of and responsible to a pharmacist; and]~~

~~*[(III)* the supervising pharmacist verifies the accuracy of all acts, tasks, or functions performed by the individual.]~~

~~[(C) Certified Pharmacy Technicians.]~~

~~*[(i)* All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam or other examination approved during an open meeting by the Board and maintain a current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.]~~

~~*[(ii)* A certified pharmacy technician shall publicly display their current certification certificate in the technician's primary place of practice and a copy of their current certification certificate in all other pharmacies where the technician performs the duties of a technician except as noted in clause (iii) of this subparagraph.]~~

~~*[(iii)* A certified pharmacy technician who only works in the inpatient portion of a Class C pharmacy is not required to publicly display their current certification certificate in the pharmacy, provided the pharmacist-in-charge maintains on file for inspection by a Board representative:]~~

~~*[(I)* the technician's current certification certificate if the pharmacy is the technician's primary place of practice; or]~~

~~*[(II)* a copy of the technician's current certification certificate if the pharmacy is not the technician's primary place of practice.]~~

(2) Duties.

(A) (No change.)

(B) Sterile pharmaceuticals. Pharmacy technicians may compound sterile pharmaceuticals pursuant to medication orders provided the pharmacy technicians:

(i) are registered pharmacy technicians within the provisions of §297.3 of this title (relating to Registration Requirements);

(ii) have completed the training specified in subsection (f) of this section; and

(iii) are supervised by a pharmacist who has completed the training specified in subsection (f) of this section and who conducts in-process and final checks, and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy)

~~*[(i)* Only pharmacy technicians who have completed the training specified in subsection (f) of this section may compound sterile pharmaceuticals pursuant to medication orders providing a pharmacist who has completed the training specified in subsection (f) of this section supervises, conducts in- process and final checks, and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).]~~

~~*[(ii)* Effective January 1, 2001, pharmacy technicians may compound sterile pharmaceuticals pursuant to medication orders provided the pharmacy technicians:]~~

~~*[(I)* are either certified pharmacy technicians or technician trainees;]~~

~~*[(II)* have completed the training specified in subsection (f) of this section; and]~~

~~*[(III)* are supervised by a pharmacist who has completed the training specified in subsection (f) of this section, conducts in-process and final checks, and affixes his or her initials to the label or if batch prepared, to the appropriate quality control~~

records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).]

(3) (No change.)

[(4) Training.]

[(A) pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge in a training manual, prior to the regular performance of their duties. Such training:]

[(i) shall include training and experience as outlined in paragraph (5) of this subsection; and]

[(ii) may not be transferred to another pharmacy unless:]

[(I) the pharmacies are under common ownership and control and have a common training program; and]

[(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician works certifies that the pharmacy technician is competent to perform the duties assigned in that pharmacy.]

[(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:]

[(i) may perform all of the duties of a pharmacy technician including the compounding of sterile pharmaceuticals provided the pharmacy technician trainee complies with the provisions of paragraph (2)(B) of this subsection; and]

[(ii) may be designated a pharmacy technician trainee for no longer than one year except as specified in paragraph (1)(B) of this subsection.]

[(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians through in-service education and training to supplement initial training.]

[(D) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:]

[(i) name of the person receiving the training;]

[(ii) date(s) of the training;]

[(iii) general description of the topics covered;]

[(iv) a statement or statements that certifies that the pharmacy technician is competent to perform the duties assigned;]

[(v) name of the person supervising the training; and]

[(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.]

[(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.]

[(5) Training program. Pharmacy technician training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:]

[(A) written procedures and guidelines for the use and supervision of pharmacy technicians. Such procedures and guidelines shall:]

[(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and]

[(ii) specify duties which may and may not be performed by pharmacy technicians; and]

[(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians in the pharmacy:]

[(i) Orientation;]

[(ii) Job descriptions;]

[(iii) Communication techniques;]

[(iv) Laws and rules;]

[(v) Security and safety;]

[(vi) Prescription drugs:]

[(I) Basic pharmaceutical nomenclature;]

[(II) Dosage forms;]

[(vii) Medication drug orders:]

[(I) Prescribers;]

[(II) Directions for use;]

[(III) Commonly-used abbreviations and symbols;]

[(IV) Number of dosage units;]

[(V) Strength and systems of measurement;]

[(VI) Route of administration;]

[(VII) Frequency of administration;]

[(VIII) Interpreting directions for use;]

[(viii) Medication drug order preparation:]

[(I) Creating or updating patient medication records;]

[(II) Entering medication drug order information into the computer or typing the label in a manual system;]

[(III) Selecting the correct stock bottle;]

[(IV) Accurately counting or pouring the appropriate quantity of drug product;]

[(V) Selecting the proper container;]

[(VI) Affixing the prescription label;]

[(VII) Affixing auxiliary labels, if indicated;]

[(VIII) Preparing the finished product for inspection and final check by pharmacists;]

[(ix) Other functions;]

[(x) Drug product Prepackaging;]

~~*[(xi)* Compounding of Non-sterile pharmaceuticals;]~~

~~*[(xii)* Written policy and guidelines for use of and supervision of pharmacy technicians.]~~

(f) (No change.)

(g) Identification of pharmacy personnel. All pharmacy personnel shall wear an identification tag or badge which bears the person's name and identifies him or her by title or function as follows:

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee a registered pharmacy technician, [~~pharmacy technician,~~] or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

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

§291.76. Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.

(a) (No change.)

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

(1) Act--The Texas Pharmacy Act, Chapters 551 - 566 and 568- 569, Occupations Code, as amended.

(2) - (22) (No change.)

(23) Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.

(24) Pharmacy technician trainee--A person who is:

(A) not registered as a pharmacy technician by the board, and either:

(B) participating in a pharmacy's technician training program; or

(C) currently enrolled in a:

(i) pharmacy technician training program accredited by the American Society of Health-System Pharmacists; or

(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.

~~[(24) Pharmacy technician--Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians, pharmacy technicians, and pharmacy technician trainees.]~~

(25) [~~(24)~~] Texas Controlled Substances Act--The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

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

(4) Pharmacy technicians.

(A) General

(i) On June 1, 2004, all persons employed as pharmacy technicians must be either registered pharmacy technicians or pharmacy technician trainees as follows.

(I) All persons who have passed the required pharmacy technician certification examination must be registered with the board under the provisions this section.

(II) All persons who have not taken and passed the required pharmacy certification examination shall be designated pharmacy technician trainees under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).

(ii) Between January 1, 2004, and May 31, 2004, all persons employed as pharmacy technicians who are qualified for registration by the board shall register according to the schedule designated by the board. Between January 1, 2004 and May 31, 2004, persons who are awaiting their scheduled time for registration and persons who have applied for registration, but the registration has not been completed shall comply with the rules in effect prior to January 1, 2004, relating to requirements and duties for certified pharmacy technicians.

(iii) All pharmacy technicians shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician Training).

~~[(A) Qualifications.]~~

~~*[(i)* Pharmacy technicians must possess education and training necessary to carry out their responsibilities.]~~

~~*[(ii)* Pharmacy technicians must be qualified to perform the tasks assigned to them.]~~

(B) Duties. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) - (ii) (No change.)

(iii) compounding sterile pharmaceuticals pursuant to medication orders provided the pharmacy technicians:

(I) are registered pharmacy technicians;

(II) have completed the training specified in §291.73 of this title (relating to Personnel); and

(III) are supervised by a pharmacist who has completed the sterile products training specified in §291.73 of this title, conducts in-process and final checks, and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records (The initials are not required on the label if it is maintained in a permanent record of the pharmacy.).

~~*[(iii)* mixing drugs with parenteral fluids pursuant to medication orders, provided a pharmacist supervises and checks the preparation;]~~

(iv) - (ix) (No change.)

(C) (No change.)

~~[(D) Training.]~~

~~*[(i)* Pharmacy technicians shall complete initial training as outlined by the pharmacist-in-charge which includes on-the-job training and related education commensurate with the tasks they are to perform, prior to the regular performance of those tasks.]~~

~~*[(ii)* Pharmacy technicians who prepare sterile parenteral and/or enteral products shall complete an additional 40 hours~~

~~of on-the-job training in the preparation, sterilization, and admixture of sterile parenteral and/or enteral products.]~~

~~*[(iii)* The pharmacist-in-charge shall assure continuing competence of pharmacy technicians through in-service education and training to supplement initial training.]~~

~~*[(iv)* A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:]~~

~~*[(I)* name of the person receiving the training;]~~

~~*[(II)* date(s) of the training;]~~

~~*[(III)* general description of the topics covered;]~~

~~*[(IV)* name of the person supervising the training; and]~~

~~*[(V)* signatures of the supportive person and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians.]~~

(5) Identification of pharmacy personnel. All pharmacy personnel shall wear an identification tag or badge which bears the person's name and identifies him or her by title or function as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee a registered pharmacy technician, [~~pharmacy technician,~~] or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the Board.

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

(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.

Filed with the Office of the Secretary of State on December 15, 2003.

TRD-200308582
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 305-8028

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CHAPTER 303. DESTRUCTION OF DANGEROUS DRUGS AND CONTROLLED SUBSTANCES

22 TAC §303.1

The Texas State Board of Pharmacy proposes amendments to §303.1, concerning Destruction of Dispensed Drugs. The amendment, if adopted, will amend the rule regarding the destruction of drugs in a nursing home to allow the drug destruction to be witnessed by any combination of two of the individuals listed.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section. For pharmacies operated by state or local government, costs to properly dispose of prescription drugs will be the same as for small or large businesses.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be allowing the destruction of drugs in a nursing home to be witnessed by any combination of two individuals listed in the section. There is no fiscal impact anticipated for small or large businesses or to other entities who are required to comply with the amended section.

Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §483.002 of the Dangerous Drug Act (Chapter 483, Health and Safety Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §483.002 as authorizing the agency to adopt rules for the proper administration and enforcement of the Dangerous Drug Act.

The statutes affected by the amended section: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§303.1. Destruction of Dispensed Drugs.

(a) Drugs dispensed to patients in health care facilities or institutions.

(1) Destruction by the consultant pharmacist. The consultant pharmacist, if in good standing with the Texas State Board of Pharmacy, is authorized to destroy dangerous drugs and controlled substances dispensed to patients in health care facilities or institutions, providing the following conditions are met.

(A) A written agreement exists between the facility and the consultant pharmacist.

(B) (No change.)

(C) The signature of the consultant pharmacists and witness(es) to the destruction and the method of destruction specified in subparagraph (B) of this paragraph may be on a cover sheet attached to the inventory and not on each individual inventory sheet, provided the cover sheet contains a statement indicating the number of inventory pages that are attached and each of the attached pages are initialed by the consultant pharmacist and witness(es).

(D) [~~(C)~~] The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(E) [~~(D)~~] The actual destruction of the drugs is witnessed by one of the following:

(i) a commissioned peace officer;

(ii) an agent of the Texas State Board of Pharmacy;

(iii) an agent of the Texas Department of Human Services, authorized by the Texas State Board of Pharmacy to destroy drugs;

(iv) an agent of the Texas Department of Health, authorized by the Texas State Board of Pharmacy to destroy drugs; or

(v) any two individuals working in the following capacities at the facility:

(I) [~~both the~~] facility administrator; [~~and:~~]

(II) [~~(I)~~] [~~the~~] director of nursing; [~~or~~]

(III) [~~(II)~~] [~~the~~] acting director of nursing; or[~~.~~]

(IV) licensed nurse.

(F) [~~(E)~~] If the actual destruction of the drugs is conducted at a location other than the facility or institution, the consultant pharmacist and witness(es) shall retrieve the drugs from the facility or institution, transport, and destroy the drugs at such other location.

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

(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.

Filed with the Office of the Secretary of State on December 15, 2003.

TRD-200308583
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 305-8028

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 405. CLIENT (PATIENT) CARE
SUBCHAPTER M. MAIL OPENING PROCEDURES

25 TAC §§405.301 - 405.304, 405.309, 405.312 - 405.314

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§405.301 - 405.304, 405.309, and 405.312 - 405.314 of Chapter 405, Subchapter M, concerning mail opening procedures.

The subchapter is proposed for repeal because the subchapter's provisions are contained in other TDMHMR rules, specifically Chapter 404, Subchapter E, governing Rights of Persons Receiving Mental Health Services, and Chapter 405, Subchapter Y, governing Rights of Mentally Retarded Persons. Additionally, the right of an individual residing in a state mental retardation facility to send and receive unopened mail is addressed in the Conditions of Participation for Intermediate Care Facilities for the Persons with Mental Retardation in the Code of Federal Regulations (CFR), Title 42, §483.420.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments.

Robert Kifowit, director, state mental retardation facilities, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the elimination of unnecessary and duplicative rules. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

The proposal would affect the Texas Health and Safety Code, §532.015(a).

§405.301. Purpose.
§405.302. Application.
§405.303. Patient or Resident Mail.
§405.304. Patient Trust Fund Accounts.
§405.309. Responsibility for Patient or Residents Funds.
§405.312. Distribution.
§405.313. References.
§405.314. Effective Date.

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 December 10, 2003.

TRD-200308490
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 206-4516

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CHAPTER 411. STATE AUTHORITY RESPONSIBILITIES

SUBCHAPTER A. ADVISORY COMMITTEES

25 TAC §§411.5, 411.6, 411.9, 411.10, 411.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§411.5, 411.6, 411.9, 411.10, and 411.13 of Chapter 411, Subchapter A, concerning advisory committees.

Section 2.151(b), HB 2292, 78th Legislature, Regular Session, abolishes each advisory committee of a health and human services agency that was created before September 1, 2003, unless the commissioner of Health and Human Services certifies that the advisory committee is exempt from abolition on September 1, 2003. The following advisory committees were not certified as exempt from abolition as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7493-7495): Citizens' Planning Advisory Committee; Medical Advisory Committee; Quality Services Council; Public Responsibility Committees; and Local Authority Technical Advisory Committee.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments because the identified advisory committees were abolished on September 1, 2003.

Gerry McKimmey, deputy commissioner, community programs, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the elimination of unnecessary rules. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

This section is proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

The proposal would affect Section 2.151(b), HB 2292, 78th Legislature, Regular Session.

§411.5. Citizens' Planning Advisory Committee.

§411.6. Medical Advisory Committee.

§411.9. Quality Services Council.

§411.10. Public Responsibility Committees.

§411.13. Local Authority Technical Advisory Committee.

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 December 10, 2003.

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Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 206-4516

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SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §411.59

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §411.59 of Chapter 411, Subchapter B, concerning interagency agreements.

The section is proposed for repeal because House Bill 2823, 78th Legislature, repealed §29.011(b)-(e) of the Texas Education Code, which required TDMHMR and other state agencies to adopt by rule a memorandum of understanding (MOU) concerning individual transition planning for students receiving special education services. The rule of the Texas Education Agency (TEA) that contained the text of the MOU, which §411.59 references, was repealed by TEA in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9832).

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeal is in effect, the proposed repeal does not have foreseeable implications relating to cost or revenue of the state or local governments.

Robert Kifowit, director, state mental retardation facilities, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit expected is the elimination of an unnecessary rule. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeal.

It is anticipated that the proposed repeal will not affect a local economy.

It is anticipated that the proposed repeal will not have an adverse economic effect on small businesses or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

This section is proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

The proposal would affect the Texas Health and Safety Code, §532.015(a).

§411.59. Memorandum of Understanding (MOU) on Individual Transition Planning for Students Receiving Special Education Services.

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 December 10, 2003.

TRD-200308491
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 206-4516

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CHAPTER 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

25 TAC §419.164

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §419.164, concerning process for enrollment of applicants, of Chapter 419, Subchapter D, governing Home and Community-based Services (HCS) Program.

The amendments will implement provisions that are consistent with the conditions of Texas Home Living (TxHmL) Program waiver application, as approved by the Centers for Medicare and Medicaid Services (CMS).

The amendments provide that a mental retardation authority may offer an Home and Community-based Services (HCS) Program vacancy to an applicant or legally authorized representative if the department has proposed the applicant's discharge or has discharged the applicant from the TxHmL Program because the applicant no longer meets the eligibility criteria for TxHmL as described in §419.556(a)(5) and (8). The amendments are necessary to implement amendments to §419.570(e)(1), which also are proposed in this issue of the *Texas Register*.

Cindy Brown, chief financial officer, has determined that, for each year of the first five year period that the proposed amendments are in effect, there are no foreseeable implications relating to costs or revenues of state or local government. The department does not anticipate that the proposed amendments will have an adverse effect on small or micro-businesses. The department does not anticipate that there will be any additional economic cost to persons required to comply with the amendments. The department does not anticipate that the amendments will affect a local economy.

Barry Waller, director, Long Term Services and Supports, has determined that, for each year of the first five-year period the proposed amendments are in effect, the public benefit expected is the use of Medicaid funds to continue home and community-based services for individuals for whom TxHmL Program services combined with non-TxHmL Program services are insufficient to assure the individual's health and welfare in the community or to prevent the individual's admission to institutional services.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, January 16, 2004, in the department's Central Office auditorium in Building 2, 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Medicaid Administration, at least 72 hours prior to the hearing at (512) 206-5349 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning the proposed amendments must be submitted in writing to Linda Logan, director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS Program.

The proposed amendments affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.164. Process for Enrollment of Applicants.

(a) (No change.)

(b) An applicant may be offered a program vacancy even though the applicant's name is not the first one on the waiting list if:

(1) the applicant is a member of a target group identified in the approved HCS waiver request; or

(2) the department has proposed the applicant's discharge or has discharged the applicant from the TxHmL Program because the applicant no longer meets the eligibility criteria described in §419.556(a)(5) and (8) of this title (relating to Eligibility Criteria).

[~~(b) An applicant who is a member of a target group identified in the approved HCS waiver request or the applicant's LAR may be offered a program vacancy even though the applicant's name is not the first one on the waiting list.~~]

(c)-(w) (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.

Filed with the Office of the Secretary of State on December 15, 2003.

TRD-200308589
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 206-5232

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SUBCHAPTER N. TEXAS HOME LIVING (TXHML) PROGRAM

25 TAC §§419.554 - 419.556, 419.558, 419.559, 419.567, 419.568, 419.570

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §§419.554-419.556, 419.558, 419.567-419.568, and 419.570, and new §419.559 of Chapter 419, Subchapter N, governing the Texas Home Living (TxHmL) Program. The repeal of §419.559, concerning department review of individual plan of care (IPC), also is proposed in this issue of the *Texas Register*.

The amendments and new section add provisions to the rule that are consistent with the Texas Home Living (TxHmL) Program waiver application as approved by the Centers for Medicare and Medicaid Services (CMS).

The amendments to §419.554 will eliminate language in subsection (a) that was needed prior to approval of the waiver application by CMS and will specify in subsection (b) that the counties in the state are divided into 41 local service areas instead of 42. New subsection (g) provides that the TxHmL Program service components are divided into two service categories; the Community Living Service Category with an annual service category limit of $8,000 per individual per Individual Plan of Care (IPC) year and the Technical and Professional Supports Service Category, with an annual service category limit of $2,000 per individual per IPC year.

The amendments to §419.555 provide in subsection (g)(2) that adaptive aids costing more than $2,000 but not more than $6,000 in an IPC year may be provided to an individual if the department approves an exception to the service category limit of the Professional and Technical Supports Service Category. In subsection (h)(1), the amendments provide that minor home modifications costing more than $2,000 but not more than $7,500 in an IPC year may be provided to an individual if the department approves an exception to the service category limit of the Professional and Technical Support Service Category.

The amendments to §419.556(a)(5) provide that to be eligible for TxHmL Program, an individual's IPC must be approved in accordance with §419.558 of the subchapter.

The amendments to §419.558(d) provide that the department will review a submitted initial, revised, or renewal IPC and will approve, modify, or not approve the IPC, but will not approve an IPC having a total cost of more than $10,000 per IPC year. New subsection (f) provides that the department may review an IPC at any time to determine if the type and amount of each service component specified in the IPC are appropriate; the subsection further requires the MRA's service coordinator to submit documentation supporting the IPC upon request from the department.

New §419.559 describes the process that the service coordinator and department must follow to authorize an increase in the service category limit of either the Community Living Service Category or the Professional and Technical Supports Service Category. Subsection (d) specifies that the department will deny an increase to the Professional and Technical Supports Service Category if the request is for more than $6,000 per IPC year for adaptive aids, $7,500 per IPC year for minor home modifications, $300 per IPC year for additional minor home modifications or maintenance of minor home modifications when the lifetime limit has been reached, or $1,000 per IPC year for dental treatment.

The amendment to §419.567(d) clarifies the content of enrollment information that is to be transmitted by an MRA to the department.

The amendments to §419.568(a)(2) require an MRA's service coordinator to submit any request for an increase in a service category limit to the department for approval and retain documentation of the request when such a request is associated with a renewal or revision of an IPC.

The amendments to §419.570 reorganize the provisions of the current rule and specify the actions to be taken by a service coordinator when permanent discharge is proposed for an individual because the individual no longer meets the eligibility criteria described in §419.556(a) (5) and (8). These provisions direct the service coordinator to inform the individual or LAR that the individual will be offered a Home and Community-based (HCS) Services Program vacancy based on availability and to assist the individual or LAR to make application for other services as requested.

Cindy Brown, chief financial officer, has determined that, for each year of the first five-year period that the proposed amendments and new section are in effect, there are no foreseeable implications relating to costs or revenues of state or local government. The department does not anticipate that the proposed amendments and new section will have an adverse effect on small or micro-businesses. The department does not anticipate that there will be any additional economic cost to persons required to comply with the amendments and new section. The department does not anticipate that the amendments and new section will affect a local economy.

Barry Waller, director, Long Term Services and Supports, has determined that, for each year of the first five-year period the proposed amendments and new section are in effect, the public benefit expected is the use of Medicaid funds to serve individuals whose names are on the waiver waiting list and individuals whose services currently are funded with general revenue.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, January 16, 2004, in the department's Central Office auditorium in Building 2, 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Medicaid Administration, at least 72 hours prior to the hearing at (512) 206-5349 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning the proposed amendments and new section must be submitted in writing to Linda Logan, director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by

fax to 512/206-4744, or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The proposed amendments and new section are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the TxHmL Program.

The proposed amendments and new section affect Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.554. Description of the Texas Home Living (TxHmL) Program.

(a) The TxHmL Program is a Medicaid waiver program [~~that will be implemented on the effective date of the waiver request as~~] approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals who live in their own homes or in their family homes. The TxHmL Program is operated by the department under the authority of the Texas Health and Human Services Commission.

(b) (No change.)

(c) The department has grouped the counties of the State of Texas into 41 [~~42~~] geographical areas, referred to as "local service areas," each of which is served by a local mental retardation authority (MRA). The department has further grouped the local service areas into nine geographical areas, referred to as "waiver contract areas." A list of the counties included in each local service area and waiver contract area may be obtained by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

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

(d)-(f) (No change.)

(g) TxHmL Program service components, as defined in §419.555 of this title (relating to Definitions of TxHmL Program Service Components), are divided into two service categories, the Community Living Service Category and the Technical and Professional Supports Service Category. Each category has an annual cost limit referred to as the service category limit. The combined cost of the two service categories must not exceed $10,000 per individual per IPC year.

(1) The service category limit for the Community Living Service Category is $8,000 per individual per IPC year, unless an exception is approved in accordance with §419.559 of this title (relating to Request to Increase Service Category Limits). This service category includes the following service components:

(A) community support;

(B) day habilitation;

(C) employment assistance;

(D) supported employment; and

(E) respite.

(2) The service category limit for the Professional and Technical Supports Service Category is $2,000 per individual per IPC year unless an exception is made in accordance with §419.559 of this title (relating to Request to Increase Service Category Limits). This service category includes the following service components:

(A) nursing;

(B) behavioral support;

(C) adaptive aids;

(D) minor home modifications;

(E) specialized therapies; and

(F) dental treatment.

§419.555. Definitions of TxHmL Program Service Components.

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

(g) The adaptive aids service component provides devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the waiver application approved by CMS that enable an individual to increase his or her mobility, ability to perform activities of daily living, or ability to perceive, control, or communicate with the environment in which he or she lives.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

(A)-(I) (No change.)

(2) Adaptive aids costing more than $2,000 but not more than $6,000 in an IPC year may be provided for an [~~up to a maximum of $6,000 per~~] individual [~~per IPC year~~] if the department has approved an exception to the service category limit of the Professional and Technical Support Service Category in accordance with §419.559 of this title (relating to Request to Increase Service Category Limits).

(3) (No change.)

(h) The minor home modifications service component provides physical adaptations to the individual's home that are necessary to insure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in his or her home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications as specified in the waiver application approved by CMS may be provided up to a lifetime limit of $7,500 per individual. Minor home modifications costing more than $2,000 but not more than $7,500 in an IPC year may be provided if the department has approved an exception to the service category limit of the Professional and Technical Support Service Category in accordance with §419.559 of this title (relating to Request to Increase Service Category Limits). After the $7,500 lifetime limit has been reached, an individual is eligible for an additional $300 per IPC year for additional modifications or maintenance of home modifications.

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

(i)-(k) (No change.)

§419.556. Eligibility Criteria.

(a) An applicant or individual is eligible for the TxHmL Program if:

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

(5) he or she has an IPC approved in accordance with §419.558 of this title (relating to Individual Plan of Care (IPC)) [~~IPC for which the IPC cost does not exceed $10,000 per IPC year~~];

(6)-(9) (No change.)

(b) (No change.)

§419.558. Individual Plan of Care (IPC).

(a)-(c) (No change.)

(d) The department will review a submitted initial, revised, or renewal IPC and will approve, modify, or not approve the IPC. The department will not approve an IPC having a total cost of more than $10,000 per IPC year. [~~An individual's IPC must be approved by the department and is subject to review in accordance with §419.559 of this title (relating to Department Review of Individual Plan of Care (IPC)).~~]

(e) (No change.)

(f) The department may review an IPC at any time to determine if the type and amount of each service component specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to the department in accordance with a request from the department for documentation.

§419.559. Request to Increase Service Category Limits.

(a) If the cost of either service category included on an IPC submitted to the department exceeds the service category limits described in §419.554(g)(1) and (2) of this title (relating to Description of the Texas Home Living (TxHmL) Program) but the total annual cost of the IPC does not exceed $10,000, an individual's service coordinator must request from the department an increase in the appropriate service category limit.

(1) The service coordinator must submit the request in writing.

(2) The written request must be accompanied by documentation meeting the requirements of §419.558(b)(1)-(3) of this title (relating to Individual Plan of Care (IPC)).

(b) The department will review the request and approve or deny it.

(c) The department may approve the request if the increase is determined necessary to protect the individual's health and welfare or to prevent the individual's admission to institutional services.

(d) The department will deny a request for an increase to the Professional and Technical Support Service Category if the request is for:

(1) more than $6,000 per IPC year for adaptive aids;

(2) more than $7,500 per IPC year for minor home modifications;

(3) more than $300 per IPC year for additional minor home modifications or minor home modification maintenance if the lifetime limit has been reached; or

(4) more than $1,000 per IPC year for dental treatment.

(e) After approving or denying a request, the department will review the individual's IPC in accordance with §419.558(d) of this title (relating to Individual Plan of Care (IPC)).

(f) If the department denies a request to increase a service category limit, the department will:

(1) notify the individual's service coordinator; and

(2) notify the individual or LAR of the individual's right to request a fair hearing in accordance with §419.571 of this title (relating to Fair Hearings).

§419.567. Process for Enrollment.

(a)-(c) (No change.)

(d) When the selected TxHmL Program provider has agreed to deliver those services delineated on the IPC, the MRA will transmit [~~the enrollment information~~] to the department enrollment information including completed MR/RC Assessment, proposed IPC, and, if applicable, a request for an increase in a service category limit as described in §419.559 of this title (relating to Request to Increase Service Category Limits). The department will notify the applicant or the LAR, the selected TxHmL Program provider, and the MRA of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §419.556 (relating to Eligibility Criteria).

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

§419.568. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and prior to the expiration of an individual's IPC, the service planning team and the TxHmL Program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, will initiate revisions to the IPC in response to changes in the individual's needs and identified outcomes as documented in the current PDP.

(2) The service coordinator must submit annual reviews and necessary revisions of the IPC, including any request for an increase in a service category limit as described in §419.559 of this title (relating to Request to Increase Service Category Limits), to the department for approval and retain documentation as described in §419.567 of this title (relating to Process for Enrollment) and §419.558 of this title (relating to Individual Plan of Care (IPC)).

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

§419.570. Permanent Discharge from the TxHmL Program.

(a) An individual may be permanently discharged from the TxHmL Program if:

(1) the individual no longer meets the eligibility criteria specified in §419.556 of this title (relating to Eligibility Criteria);

(2) the individual or LAR requests permanent discharge; or

(3) the individual or LAR refuses to cooperate in the delivery or planning of services as documented by the TxHmL Program provider and the service coordinator.

[~~(a) Within ten working days of a proposed permanent discharge of an individual, the service coordinator must submit a written request containing the following information to the department and provide a copy of the request to the individual or LAR:~~]

[~~(1) justification for the permanent discharge; and~~]

[~~(2) a discharge plan documenting, as appropriate:~~]

[~~(A) that the individual or LAR was informed of the individual's option to transfer to another program provider and the consequences of permanent discharge for receiving future TxHmL Program services; and~~]

[~~(B) the service linkages that are in place following the individual's discharge from the TxHmL Program.~~]

(b) The department may propose permanent discharge of an individual at its own initiation or based on an MRA's request for permanent discharge of an individual.

[~~(b) The department may approve an individual's discharge from the TxHmL Program if:~~]

[~~(1) the individual no longer meets the eligibility criteria specified in §419.556 of this title (relating to Eligibility Criteria);~~]

[~~(2) the individual or LAR requests permanent discharge;~~]

[~~(3) the individual or LAR refuses to cooperate in the delivery or planning of services as documented by the TxHmL Program provider and the service coordinator; or~~]

[~~(4) the individual's service planning team determines that the individual no longer requires TxHmL Program services to maintain his or her residence in the community.~~]

(c) To request permanent discharge of an individual by the department, the individual's service coordinator must submit a written request containing the following information to the department and provide a copy of the request to the individual or LAR:

(1) justification for the permanent discharge; and

(2) a discharge plan documenting, as appropriate:

(A) that the individual or LAR was informed of the individual's option to transfer to another program provider and the consequences of permanent discharge for receiving future TxHmL Program services; and

(B) the service linkages that are in place following the individual's discharge from the TxHmL Program.

[~~(c) If the department approves the request for permanent discharge, the department must send a written discharge notification to the individual or LAR, the TxHmL Program provider, and the MRA indicating the effective date of the discharge and the individual's right to a fair hearing in accordance with §419.571 of this title (relating to Fair Hearings).~~]

(d) If the department proposes to permanently discharge an individual, the department must send a written discharge notification to the individual or LAR, the TxHmL Program provider, and the MRA indicating the effective date of the discharge and the individual's right to a fair hearing in accordance with §419.571 of this title (relating to Fair Hearings).

(e) If the reason for the proposed permanent discharge is that the individual no longer meets the eligibility criteria described in §419.556(a)(5) and (8) of this title (relating to Eligibility Criteria), the department will instruct the service coordinator to:

(1) inform the individual or LAR that the department will, based on availability, offer the individual a program vacancy in the Home and Community-based Services Program in accordance with §419.164(b)(2) of this title (relating to Process for Enrollment of Applicants); and

(2) offer to assist the individual or LAR to apply for other services for which the individual may be eligible including other home and community-based service programs and ICF/MR Program services.

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 December 15, 2003.

TRD-200308590
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 206-5232

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25 TAC §419.559

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of §419.559, concerning department review of individual plan of care (IPC), of Chapter 419, Subchapter N, governing Texas Home Living (TxHmL) Program.

The repeal will permit the department to propose new §419.559, concerning request to increase service category limits. The new section, which also is proposed in this issue of the *Texas Register*, will implement provisions that are consistent with the TxHmL Program waiver application, as approved by the Centers for Medicare and Medicaid Services (CMS). Provisions contained in §419.559 have been incorporated into amendments to §419.558, which also are proposed in this issue of the *Texas Register*.

Cindy Brown, chief financial officer, has determined that, for each year of the first five year period that the proposed repeal is in effect, there are no foreseeable implications relating to costs or revenues of state or local government. The department does not anticipate that the proposed repeal will have an adverse effect on small or micro-businesses. The department does not anticipate that there will be any additional economic cost to persons required to comply with the proposed repeal. The department does not anticipate that the proposed repeal will affect a local economy.

Barry Waller, director, Long Term Services and Supports, has determined that, for each year of the first five-year period the repeal is in effect, the public benefit expected is the consistency between the program rule and the federally approved TxHmL Program waiver application.

A hearing to accept oral and written testimony from members of the public concerning the proposal has been scheduled for 1:30 p.m., Friday, January 16, 2004, in the department's Central Office auditorium in Building 2, 909 West 45th Street, in Austin, Texas. Persons requiring an interpreter for the deaf or hearing impaired should contact the department's Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify Medicaid Administration, at least 72 hours prior to the hearing at (512) 206-5349 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning the proposed repeal must be submitted in writing to Linda Logan, director, Policy Development, by mail to P.O. Box 12668, Austin, Texas 78711, by fax to 512/206-4744,

or by e-mail to policy.co@mhmr.state.tx.us within 30 days of publication of this notice.

The repeal is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the TxHmL Program.

The proposed repeal affects Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c).

§419.559. Department Review of Individual Plan of Care (IPC).

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 December 15, 2003.

TRD-200308591
Rodolfo Arredondo
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 206-5232

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE

SUBCHAPTER B. COST-SHARE ASSISTANCE FOR BRUSH CONTROL

31 TAC §§517.23 - 517.31, 517.33, 517.36

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC §§517.23 - 517.31, 517.33, and 517.36. The amendments are proposed to accommodate amendments to Chapter 203 of the Agriculture Code made by the 78th Texas Legislature Regular Session pursuant to Senate Bill 1828. A section-by-section discussion of the proposed amendments is included below.

The proposed amendments to §517.23 are related to removal of the term critical area and replacement with the term brush control area pursuant to §203.053 of the Agriculture Code as amended by the 78th Texas Legislature. The section is also amended to add definitions for Texas Department of Agriculture (TDA) and Texas Water Development Board (TWDB). Other proposed amendments include re-numbering the paragraphs to accommodate added and deleted definitions.

The proposed amendments to §517.24 are to meet the requirement that all areas of the state be considered in establishing brush control areas and hearings held regarding brush control plans pursuant to §203.051 and §203.052, Agriculture Code as amended.

The proposed amendments to §517.25 are related to removal of the term critical area and replacement with the term brush control area and to evaluate brush control areas rather than designate critical areas pursuant to §203.053, Agriculture Code as amended. Reference to feasibility studies is removed in §517.25(b), (b)(1) and (2), and (e) to be consistent with §203.053, Agriculture Code as amended. As a result the subsections are proposed to be re-lettered as follows: §517.25(b)(1) will become (b); (b)(2) will be eliminated; (b)(3) will become (c); (b)(4) will become (d); (c) will become (e); (d) will become (f); (e) will be eliminated.

The proposed amendment to §517.26(a)(1) is to remove the term critical area and §517.26(d) is changed to remove the term critical area and replace with the term brush control area pursuant to §203.053, Agriculture Code as amended. Proposed amendments to §517.26(b)(2) and (4) are pursuant to §203.159(a) and (c), Agriculture Code as amended. The proposed amendment to §517.26(c) is related to allocating funds to brush control areas rather than critical areas to be consistent with §203.053, Agriculture Code as amended.

The proposed removal of §517.27(a) is pursuant to the repeal of §203.155, Agriculture Code as amended. Section 517.27(c)(3) and (5) are proposed to be amended to accommodate §203.055, Agriculture Code as amended. Section 517.27(e) is proposed to be amended to remove the term critical area and replace with the term brush control area pursuant to §203.053, Agriculture Code as amended. Other proposed amendments to §517.27 include re-lettering of subsections (b) - (e) to become (a) - (d) due to the removal of (a) as previously described.

The proposed amendments to §517.28 are related to removal of the term critical area and replacement with the term brush control area pursuant to §203.053, Agriculture Code as amended.

The proposed amendments to §517.29(b)(1) - (3), (c)(2), and (d) are related to removal of the term critical area and replacement with the term brush control area pursuant to §203.053, Agriculture Code as amended. In addition, the term feasibility studies is replaced with the term completed evaluations in subsection (d). Also, to accommodate §203.154(a) and (b), Agriculture Code as amended, §517.29(d)(1) and (2) are proposed to be added regarding maximum rates.

The proposed amendments to §517.30(a), (c), (d), and (f) are related to removal of the term critical area and replacement with the term brush control area pursuant to §203.053, Agriculture Code as amended. Section 517.30(a)(2) is proposed to be added to accommodate §203.154(d), Agriculture Code as amended regarding cost share rates for political subdivisions. Section 517.30(b)(2) is proposed to be amended to accommodate §203.154(c)(3), Agriculture Code as amended regarding cost-share rates. Section 517.30(g) and (h) are proposed to be amended to add political subdivisions to accommodate §203.156, Agriculture Code as amended.

The proposed amendment to §517.31(a) is to require application forms as provided by the State Board to accommodate §203.156, Agriculture Code as amended.

The proposed amendments to §517.33(a), (b), (c)(2) and (3), and (f)(2) are related to removal of the term critical area and replacement with the term brush control area pursuant to §203.053, Agriculture Code as amended. The proposed amendment to §517.33(b)(1) is pursuant to §203.157(1), Agriculture Code as amended regarding location of projects when considering criteria for approval of contracts. The proposed amendment to §517.33(b)(6) is to replace the word "his" with the term "the applicant's." The proposed amendment to §517.33(b)(8) is to include TDA and TWDB as pursuant to §203.157(8), Agriculture Code as amended. The proposed amendment adds §517.33(g) to outline the State Board's brush control contract auditing policy. Proposed §517.33(g)(1) is added to outline the parties and time period that brush control contracts are subject to audit. Proposed §517.33(g)(2) is added to establish records accessibility and records retention. Proposed §517.33(g)(3) and (4) are added to describe the possible consequences resulting from brush control contract violations.

The proposed amendments to §517.36 is to remove the term critical area and replace with the term brush control area pursuant to §203.053, Agriculture Code as amended.

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the proposed amendments.

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for each year of the first five years these proposed amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be improved effectiveness of implementing the water quality management plan program.

There is no anticipated cost to small businesses or individuals resulting from the proposed amendments.

Comments on the proposal may be submitted in writing to Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 232.

The amendments are proposed under authority of the Agriculture Code Title 7, Chapter 203, §203.012, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary to carry out the brush control program and §203.011, which provides authorization for the State Board to administer the brush control program.

No other statutes, articles, or codes are affected by this proposal.

§517.23. Definitions.

For the purposes of these rules the following definitions shall apply.

(1) Allocated funds--Funds budgeted through the State Board [~~to a critical area~~] for cost-share assistance.

(2) - (5) (No change.)

(6) Brush control area--An area evaluated according to criteria established in §517.25 of this title and allocated cost-share funds by the Texas State Soil and Water Conservation Board.

(7) Brush control area working group--The working group established in each brush control area to carry out the roles and responsibilities listed in §517.28(c) of this title. Membership is made up of Soil and Water Conservation District directors from each Soil and Water Conservation District in a brush control area.

(8) [~~(6)~~] Brush control contract--A legally binding 10-year agreement between the applicant, Soil and Water Conservation District, and Texas State Soil and Water Conservation Board whereby the applicant agrees to implement all brush control practice(s) for which cost-share is to be provided in accordance with standards established by the Texas State Soil and Water Conservation Board. Only practice(s) that the Texas State Soil and Water Conservation Board has approved and are included in an approved brush control plan are eligible for inclusion in the brush control contract.

(9) [~~(7)~~] Brush control plan--A site-specific plan for implementation of brush control, sound range management practices, and other soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the Soil and Water Conservation District.

(10) [~~(8)~~] Cost-share assistance--An award of money made to an eligible person for brush control pursuant to the purpose(s) for which the funds were appropriated.

(11) [~~(9)~~] Cost-share rate--The percent of the cost of brush control to be awarded an eligible person based on actual cost not to exceed average cost.

~~[(10) Critical area--An area of critical need designated by the Texas State Soil and Water Conservation Board in the State Brush Control Plan according to the criteria established in §517.25.]~~

~~[(11) Critical area working group--The working group established in each critical area to carry out the roles and responsibilities listed in §517.28(c). Membership is made up of Soil and Water Conservation District directors from each Soil and Water Conservation District in a critical area.]~~

(12) Eligible land--Those lands within a brush control [~~designated critical~~] area that are eligible for application of brush control using cost-share assistance.

(13) Eligible person--Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a brush control [~~critical~~] area and is a cooperator with the local Soil and Water Conservation District shall be eligible for cost-share assistance

(14) - (16) (No change.)

(17) Obligated funds--Monies from a brush control [~~critical~~] area's allocated funds that have been committed to an applicant after final approval of the brush control contract by the Soil and Water Conservation District and Texas State Soil and Water Conservation Board.

(18) (No change.)

(19) Priority system--The system devised collectively by the brush control [~~critical~~] area working group, under guidelines of the State Board, for ranking brush control applications and for facilitating the disbursement of allocated funds in line with the brush control [~~critical~~] area's priorities.

(20) - (22) (No change.)

(23) Texas Department of Agriculture [~~Parks and Wildlife Department~~], herein referred to as TDA [~~TPWD~~]--The government

agency of this state organized pursuant to the Agriculture [Parks and Wildlife] Code of Texas, Title 2, Chapter 11.

(24) Texas Parks and Wildlife Department, herein referred to as TPWD--The government agency of this state organized pursuant to the Parks and Wildlife Code of Texas, Title 2, Chapter 11.

(25) Texas Water Development Board, herein referred to as TWDB--The government agency of this state organized pursuant to the Water Code of Texas, Title 2, Subtitle A, Chapter 6.

(26) [(24)] Water Conservation--The process of reducing water consumption and/or preventing future increases in water consumption. As related to the Brush Control Program, the process of reducing water consuming brush and subsequently, the enhancement of available water resources.

§517.24. State Brush Control Plan.

(a) (No change.)

(b) The State Brush Control Plan shall:

(1) include a comprehensive strategy for managing brush in all areas of the state where brush is contributing to a substantial water conservation problem and

(2) rank areas of the state in need of a [designate areas of critical need in the state in which to implement the] brush control program considering the criteria established in §517.25.

(c) Before the State Board adopts the plan, the State Board shall call and hold a public hearing to consider a proposed plan.

(1) In addition to providing notice in the *Texas Register*, the State Board shall mail written notice of the hearing to each SWCD in the state not less than 30 days before the date the hearing is to be held. The notice must include the date and place for holding the hearing, [and must] state the purpose for holding the hearing, and include instructions for each district to submit written comments on the proposed plan.

(2) At the hearing, representatives of a SWCD and any other person may appear and present testimony including information and suggestions for any changes in the proposed plan. The State Board shall enter into the record any written comments received on the proposed plan and shall consider all written comments and testimony before taking final action on the plan.

(3) After the conclusion of the hearing, the State Board shall consider the testimony, including the information and suggestions made at the hearing and in written comments, and[,] after making any changes in the proposed plan that it finds necessary, the State Board shall adopt the plan.

§517.25. Evaluating Brush Control Areas [Designation of Critical Areas].

(a) The [Prior to designating a critical area, the] State Board, in cooperation with affected SWCDs, other agencies, universities, and appropriate local interests, shall evaluate and rank [may study the feasibility of utilizing] brush control areas [to conserve water].

[(b) Feasibility Studies.]

(b) [(1)] Evaluations [Feasibility studies] shall, where appropriate, assess [evaluate] brush type, density, and location; management methods; revegetation options; geology and soils data; water needs or potential needs; hydrology; potential water yield; wildlife concerns; economics; and landowner interest. The TPWD shall be consulted when evaluating wildlife concerns. The TWDB shall be consulted in regards to the effects of the brush control program on water quantity. The TDA shall be consulted in regards to the effects of the brush control program on agriculture.

[(2) Feasibility studies shall be conducted in watersheds in the general brush control area as identified in the State Brush Control Plan or where designated by the State Board.]

(c) [(3)] Specific areas for evaluation [Specific watersheds for studies] will be determined by the State Board in consultation with SWCDs, other agencies, and universities. SWCDs may submit written requests to the State Board for evaluation of areas for brush control [feasibility studies].

(d) [(4)] The State Board shall consider water needs of the area and potential for water yield when selecting areas for evaluation. [watersheds for study].

(e) [(c)] Following evaluation [In designating critical areas], the State Board shall rank brush control areas considering [consider]:

(1) the location of various brush infestations;

(2) the type and severity of [various] brush infestations;

(3) the various management methods that may be used to control brush;

(4) the amount of water produced by a project and the severity of water shortage in the project area [conservation needs];

(5) the cost effectiveness of utilizing brush control to conserve water;

(6) the potential water quality impacts;

(7) the availability of funding; and

(8) any other criteria that the State Board considers relevant to assure that the brush control program can be most effectively, efficiently, and economically implemented.

(f) [(d)] In ranking brush control [designating critical] areas, the State Board shall give priority to areas with the most critical water conservation needs and in which brush control and revegetation projects will be most likely to produce substantial water conservation.

[(e) Request for designation as a critical area. SWCDs may submit written requests to the State Board for designation of areas for which the feasibility of brush control has been determined.]

§517.26. Administration of Funds.

(a) Project Development.

(1) SWCDs or other agencies in cooperation with SWCDs may develop project proposals [within critical areas] in accordance with criteria established in the State Brush Control Plan.

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

(b) Priority of Projects.

(1) (No change.)

(2) If the demand for funds under the cost-sharing program is greater than funds available, the State Board shall [may] establish priorities favoring the areas with the most critical water conservation needs and projects that will be most likely to produce substantial water conservation.

(3) (No change.)

(4) The quantity of stream flows or groundwater or [amount of land dedicated to the project that will produce significant] water conservation from the control of brush is a consideration in assigning priority.

(c) Allocation of funds. Allocations of resources shall be based on priority considerations and [The State Board may allocate

funds only for projects in critical areas as designated by the State Board. Such allocations] may be adjusted throughout the year as available funds and brush control [critical] area needs and priorities change in order to achieve the most efficient use of state funds.

(d) Requests for allocations. Brush control [Critical] area working groups may submit written requests for cost-share allocations to the State Board.

(e) (No change.)

§517.27. Approval of Brush Control Methods.

[(a) Cost sharing is available only for projects that use a method of brush control approved by the State Board.]

(a) [(b)] The State Board, in consultation with SWCDs, shall study and must approve all methods used to control brush considering the overall impact of the project [the project will have within critical areas].

(b) [(c)] The State Board may approve a method for cost-sharing if the State Board finds that the proposed method:

(1) has proven to be an effective and efficient method for controlling brush;

(2) is cost efficient;

(3) will have a beneficial impact on the development of water sources and wildlife habitat;

(4) will conserve topsoil to prevent erosion or silting of any river or stream; and/or

(5) will allow the revegetation of the area after the brush is removed with plants that are beneficial to stream flows, groundwater levels, and livestock and wildlife.

(c) [(d)] Approved methods shall be designated in program guidance established by the State Board.

(d) [(e)] Request for approval of brush control methods. Brush control [Critical] area working groups, as established by §517.28(b), may submit written requests to the State Board for approval of brush control methods for a brush control [critical] area.

§517.28. Powers and Duties of SWCDs.

(a) The State Board has delegated the responsibilities in this section to the SWCDs [in which all or part of a critical area is located].

(b) Establishment and composition of brush control [critical] area working group.

(1) In each brush control area allocated funding by the State Board, a brush control area working group shall be established, composed of SWCD directors from each SWCD in the brush control area.

[(1) In each critical area designated by the State Board, a critical area working group shall be established, composed of SWCD directors from each SWCD in which all or part of the critical area is located.]

(2) The State Board shall serve as the facilitator for the brush control [critical] area working group.

(3) Agencies, universities, landowners and appropriate local interests may serve in an advisory capacity to the brush control [critical] area working group, but shall not have voting privileges.

(4) The brush control [critical] area working group shall hold an organizational meeting to:

(A) establish final membership

(i) - (ii) (No change.)

(iii) As approved by participating SWCDs within a brush control [critical] area, SWCDs may be allowed to have more than one SWCD director serve on the brush control [critical] area working group.

(iv) (No change.)

(B) establish operating procedures

(i) The brush control [critical] area working group shall elect a chairman.

(ii) The brush control [critical] area working group shall establish the quorum necessary for decision-making. Only those members present shall be eligible to vote. Voting by proxy shall not be allowed.

(iii) The brush control [critical] area working group may establish attendance requirements and other necessary procedures.

(c) The brush control [critical] area working group shall:

(1) designate, from the State Board approved list, those brush control methods that will be eligible for cost-share [in the critical areas];

(2) establish maximum cost-share rates [for critical area] not to exceed maximums set by the State Board in §517.29(d);

(3) develop average cost annually for each practice designated [on the critical area's approved practice list] not to exceed costs established by the State Board;

(4) - (7) (No change.)

(8) announce the cost-share program [within the critical area];

(9) establish the minimum amount of brush acreage that must be enrolled within sub-basins of the brush control [critical] area in order to qualify for funding;

(10) prioritize applications under the working group approved priority system [for the critical area]; and

(11) (No change.)

(d) Each SWCD in brush control areas allocated funding [within a critical area] shall:

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

(4) provide or arrange for technical assistance for eligible applicants according to priority established by the brush control [critical] area working group;

(5) - (13) (No change.)

§517.29. Cost-share for Brush Control.

(a) (No change.)

(b) Average costs.

(1) The State Board, in consultation with SWCDs in the brush control area [which all or part of the critical area is located], shall establish average costs for each practice [approved for the critical area] considering the results of completed evaluations. [the feasibility studies.]

(2) The brush control [critical] area working group shall develop average costs annually for each [practice on the critical area's] approved practice [list] not to exceed the average costs established by the State Board.

(3) The brush control [~~critical~~] area working group may submit a written request to the State Board to increase the average costs established for each practice.

(c) Maximum cost-share amount available.

(1) (No change.)

(2) The brush control [~~critical~~] area working group may establish the maximum cost-share assistance that an eligible person may receive under the program in any one year, and the lifetime maximum cost-share assistance that an eligible person may receive.

(d) Cost-share rates.

(1) The State Board shall establish, in program guidance, the cost-share rate for each practice approved for the brush control [~~critical~~] area considering the results of the completed evaluations. [~~feasibility studies. The total cost-share shall not exceed 80%. The critical area working group shall establish cost-share rates, not to exceed those established by the State Board.~~]

(2) Not more than 70% of the total cost of a single brush control project may be made available as the state's share in cost sharing.

(3) 100% of the total cost of a single project on public lands may be made available as the state's share in cost sharing.

(4) The brush control area working group shall establish cost-share rates, not to exceed those established by the State Board.

§517.30. Eligibility for Cost-share Assistance [~~cost-share assistance~~].

(a) Eligible person.

(1) Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper participates in an agricultural or wildlife operation within a brush control [~~critical~~] area and is a cooperator with the local SWCD shall be eligible for cost-share assistance.

(2) A political subdivision is eligible for cost sharing under the brush control program, provided that the state's share may not exceed 50% of the total cost of a single project.

(b) Ineligible person.

(1) (No change.)

(2) The State Board may grant an exception if the State Board finds that joint participation of the state brush control program and any federal brush control program will enhance the efficiency and effectiveness of a project, [~~and~~] lessen the state's financial commitment to the project, and not exceed 80% of the total cost of the project.

(c) Eligible land. To be eligible for cost-share assistance, the land must be within a brush control [~~designated critical~~] area and fall into any of the following categories:

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

(d) Ineligible lands. Allocated funds shall not be used on land outside of a brush control [~~designated critical~~] area or land not used for agricultural or wildlife production.

(e) (No change.)

(f) Eligible practices. Brush control methods, which the State Board has approved and which are included in the applicant's approved brush control plan and contract, shall be eligible for cost-share assistance. The brush control [~~critical~~] area working group shall designate their list of eligible methods from those approved by the State Board.

(g) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall file an application with the local SWCD.

(h) Requirement to develop a brush control plan. In order to qualify for cost-share assistance, an eligible person, including political subdivisions, shall develop a brush control plan. Brush control plans shall meet resource management system requirements on acres planned, as set forth in the FOTG.

(i) (No change.)

§517.31. Responsibility of Applicants [~~applicants~~].

(a) Applicants shall complete and submit an application form as provided by the State Board;

(b) - (g) (No change.)

§517.33. Contracts for Cost-share [~~cost-share~~].

(a) According to the priority of an application, the SWCD shall negotiate a ten-year brush control contract with the successful applicant in the brush control [~~critical~~] area subject to:

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

(b) Criteria to consider. In approving a contract for cost sharing, the SWCD, in accordance with criteria established by the brush control [~~critical~~] area working group, shall consider:

(1) the location of the project; [~~whether the brush control is to be carried out in a critical area;~~]

(2) - (5) (No change.)

(6) whether the applicant is financially able to provide the applicant's [~~his~~] share of the money for the brush control;

(7) (No change.)

(8) any comments and recommendations submitted by [~~of~~] the TDA, TWDB, or TPWD; and

(9) (No change.)

(c) Approval of contracts. The SWCD may approve a contract if, after considering the factors listed in §517.33(c) and any other relevant factors, the SWCD finds:

(1) (No change.)

(2) the method of control is a method approved by the brush control [~~critical~~] area working group; and

(3) the brush control is to be carried out in an area eligible for funding as prioritized [~~a critical area designated~~] under the State Brush Control Plan.

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

(f) Amending contracts.

(1) (No change.)

(2) The amount of funds obligated for brush control may be adjusted, provided funds are available and the adjustment is considered a priority according to the brush control [~~critical~~] area working group priority system.

(3) (No change.)

(g) Audits. It is the policy of the State Board to develop and implement audit guidelines that adequately safeguard assets administered within the purview of this agency in a cost effective manner.

(1) All parties to the contract are subject to audit by the State Board and/or SWCD for a period of two years after termination of the contract.

(2) The State Board and/or SWCD shall have access to all relevant applicant records, including all records of contractors and/or subcontractors that are pertinent to the contract, for the purpose of verifying compliance of contracts with the provisions of this subchapter and other state requirements. All parties shall maintain copies of performance certifications, contractor billing, and cancelled checks for a period of two years after termination as applicable to each party.

(3) The State Board and/or SWCD may withhold funds under this subchapter from applicants found to be in violation of the terms of the contract, this subchapter or other state requirements and may require applicants to reimburse the State Board for funds claimed and received in violation of this subsection or other state requirements.

(4) The State Board and/or SWCD may terminate a contract, in whole or in part, or negotiate a contract amendment in the event of a failure to comply with the terms of the contract provided that no such action may be effected unless the applicant is given not less than ten days written notice (delivered by certified mail, return receipt requested).

(A) Upon receipt of a termination action, applicant will promptly discontinue all services affected, and deliver all materials and deliverables as may have been accumulated by applicant in performing this contract whether completed or in the process.

(B) If the State Board terminates this contract then, without prejudice to any other right or remedy of the State Board, applicant will be reimbursed for actual incurred costs that are allowable and eligible limited to the total maximum amount of the contract.

§517.36. Reporting and Accounting [~~accounting~~].

The State Board shall receive and maintain required reports showing the unobligated balance of funds for each brush control [~~critical~~] area as shown on each ledger at the close of the last day of each month.

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 December 12, 2003.

TRD-200308544
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 25, 2004
For further information, please call: (254) 773-2250

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31 TAC §517.34

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §517.34 to adequately safeguard brush control funds administered within the purview of this agency in a cost effective manner.

The proposed amendments clarify the documentation necessary for receiving brush control cost-share payments in §517.34(b).

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the proposed amendments.

Mr. Isom has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the amended section will be improved effectiveness of implementing the brush control program.

There is no anticipated cost to small businesses or individuals resulting from the proposed amendments.

Comments on the proposal may be submitted in writing to Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 232.

The amendments are proposed under the Agriculture Code Title 7, Chapter 203, §203.012, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary to carry out the brush control program and §203.011, which provides authorization for the State Board to administer the brush control program.

No other statutes, articles, or codes are affected by this proposal.

§517.34. Payment to recipients.

(a) (No change.)

(b) Upon satisfactory receipt of performance certifications, invoices, and other required documentation the [~~The~~] State Board shall cause payment for cost-share assistance to be issued to the applicant.

(c) - (d) (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.

Filed with the Office of the Secretary of State on December 12, 2003.

TRD-200308564
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 25, 2004
For further information, please call: (254) 773-2250

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31 TAC §517.37

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to 31 TAC §517.37. The proposed amendment is needed to achieve consistency with state law, specifically S.B. 1828, enacted by the 78th Legislature in Regular Session.

The proposed amendment provides that in addition to consulting with the Texas Parks and Wildlife Department in regards to the effects of the brush control program on fish and wildlife, the State Board will also consult with the Texas Water Development Board and the Texas Department of Agriculture as set forth in Section 203.016, Texas Agriculture Code and shall be notified of all critical area working group meetings. Additionally, §517.37(b) is deleted since there are to be no more feasibility studies conducted.

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering these proposed rules.

Mr. Isom has also determined that for the first five year period these rules are in effect, the public benefit anticipated as a result of administering these rules will be improved effectiveness of implementing the cost-share assistance program for implementation of soil and water conservation land improvement measures.

There is no anticipated cost to small businesses or individuals resulting from these proposed rules.

Comments on the proposal may be submitted in writing to Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, ext. 232.

The amendments are proposed under the Agriculture Code Title 7, Chapter 203, §203.012, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary to carry out the brush control program and §203.011, which provides authorization for the State Board to administer the brush control program.

No other statutes, articles, or codes are affected by this proposal.

§517.37. Consultation with other agencies [the ~~TPWD~~].

(a) The State Board shall consult with the Texas Parks and Wildlife Department (TPWD), the Texas Water Development Board and the Texas Department of Agriculture as set forth in Section 203.016, Agriculture Code [~~TPWD in regard to the effects of the brush control program on fish and wildlife~~].

[~~(b) When assessing the feasibility of brush control in a watershed, the TPWD shall be consulted concerning the effects of brush control on fish and wildlife and shall be provided with an opportunity to review and comment on feasibility studies.~~]

(b) [~~(c)~~] The Texas Parks and Wildlife Department, the Texas Water Development Board, the Texas Department of Agriculture [~~TPWD~~] and other agricultural interests in the affected area shall be notified of all critical area working group meetings. The TPWD will provide technical assistance to the critical area working group in the development and implementation of the brush control plans.

(c) [~~(d)~~] Comments and recommendations from the TPWD shall be considered when passing on applications for cost-share.

(d) [~~(e)~~] Applicants shall be notified that the TPWD provides free technical guidance to landowners regarding the management of wildlife resources and habitats on their lands.

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 December 15, 2003.

TRD-200308573
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 25, 2004
For further information, please call: (254) 773-2250

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CHAPTER 519. TECHNICAL ASSISTANCE
SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.9, §519.10

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §519.9 and §519.10 to comply with Rider 4 of the State Board's 2004-2005 Appropriation passed by the 78th Legislature which states: It is the intent of the Legislature that an allocation of 25% of technical assistance grant funds shall be made at the beginning of each fiscal year of the 2004-05 biennium. The remaining balance of grant funds shall be disbursed on a reimbursement basis during the fiscal year when expenditures are incurred. Grant distributions are made contingent upon districts filing annual technical assistance expenditure summary reports with the Soil and Water Conservation Board.

The proposed amendment changes §519.9 to outline the new disbursement processes for technical assistance grant funds. Proposed §519.10 is changed to establish annual reporting requirements for technical assistance grant funds.

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering these proposed rules.

Mr. Isom, has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering these rules will be improved effectiveness of implementing the technical assistance program.

There is no anticipated cost to small businesses or individuals resulting from these proposed rules.

Comments on the proposal may be submitted in writing to Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, TX 76503, (254) 773-2250, ext.2

The amendments are proposed under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§519.9. Payment of State Funds.

(a) On the first working day of each fiscal year or as soon as possible thereafter, the State Board shall cause to be paid to each district 25% [~~80%~~] of the amount allocated to that district for the fiscal year.

(b) Additional payments shall be made on a reimbursement basis. [~~including the 20% not paid at the beginning of the fiscal year and any adjustments made possible by other funding sources or unused allocations from other districts may be paid to a district at such time as requested by the district provided;~~]

(1) each district receiving funds under provisions of this chapter shall file with the State Board a monthly report of expenditures no later than the 30th of the month following the end of each reporting period on forms provided by the State Board. [~~the initial 80% payment has been substantially expended, and~~]

(2) upon verification that the reports are in order, the State Board shall cause payment for reimbursement of expenses to be made to the district.

(3) upon receipt of the last monthly report, the State Board shall perform a reconciliation of funds and pay the claim accordingly.

(4) [~~(2)~~] the district has complied with the reporting requirements of §519.10 and §519.11 of this chapter.

[(3) Grant allocations are made contingent upon districts filing quarterly expenditure reports and an annual grant expenditure summary report.]

(c) Any unexpended and unobligated balance on the district books at August 31 will be treated as a payment toward that districts allocation for the subsequent fiscal year.

§519.10. Reports Required.

[(a) Each district receiving funds provisions of this chapter shall file with the State Board a quarterly report of program receipts and expenditures no later than the 30th of the month following the end of each quarter.]

[(b) Quarterly reports shall be made on forms provided by the State Board.]

[(c) For purposes of this section quarter ending dates are the last day of November, February, May, and August.]

[(d)] The district shall file an Annual Grant Summary Report on or before September 30 of each year on forms provided by the State Board.

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 December 11, 2003.

TRD-200308507
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 25, 2004
For further information, please call: (254) 773-2250

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CHAPTER 521. AGRICULTURAL WATER CONSERVATION

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM FOR SOIL AND WATER CONSERVATION LAND IMPROVEMENT MEASURES

31 TAC §521.10, §521.11

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §521.10 and §521.11 to comply with Rider 4 of the State Board's 2004-2005 Appropriation passed by the 78th Legislature which states: It is the intent of the Legislature that an allocation of 25% of funds appropriated from the Agricultural Soil and Water Conservation Account No. 563 shall be made at the beginning of each fiscal year of the 2004-05 biennium. The remaining balance of grant funds shall be disbursed on a reimbursement basis during the fiscal year when expenditures are incurred. Grant distributions are made contingent upon districts filing annual technical assistance expenditure summary reports with the Soil and Water Conservation Board.

The proposed amendment changes §521.10 to outline the disbursement processes for funds appropriated from Agricultural Soil and Water Conservation Account No. 563. Proposed §521.11 is changed to establish reporting requirements for Agricultural Soil and Water Conservation Account No. 563 funds.

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering these proposed rules.

Mr. Isom, has also determined that for each year of the first five years these proposed rules are in effect, the public benefit anticipated as a result of administering these rules will be improved effectiveness of implementing the technical assistance program.

There is no anticipated cost to small businesses or individuals resulting from these proposed rules.

Comments on the proposal may be submitted in writing to Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, TX 76503, (254) 773-2250, ext.232.

The amendments are proposed under Chapter 201.020 Agriculture Code which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§521.10. Payment of State Funds.

(a) On the first working day of each fiscal year or as soon as possible thereafter, the State Board shall cause to be paid to each district 25% [80%] of the amount allocated to that district for the fiscal year.

(b) Additional payments shall be made on a reimbursement basis. [including the 20% not paid at the beginning of the fiscal year and any adjustments made possible by other funding sources or unused allocations from other districts may be paid to a district at such time as requested by the district, provided;]

(1) each district receiving funds under provisions of this chapter shall file with the State Board a monthly report of expenditures no later than the 30th of the month following the end of each reporting period on forms provided by the State Board. [the initial 80% payment has been substantially expended, and]

(2) upon verification that the reports are in order, the State Board shall cause payment for reimbursement of expenses to be made to the district.

(3) upon receipt of the last monthly report, the State Board shall perform a reconciliation of funds and pay the claim accordingly.

(4) [(2)] the district has complied with the reporting requirements of §521.11 and §521.12 of this chapter.

[(3) grant allocations are made contingent upon districts filing quarterly expenditure reports and an annual grant expenditure summary report.]

(c) Any unexpended and unobligated balance on the district books at August 31 will be treated as a payment toward that district's allocation for the subsequent fiscal year.

§521.11. Reports Required.

[(a) Each district receiving funds under provisions of this chapter shall file with the State Board a quarterly report of program receipts and expenditures no later than the 30th of the month following the end of each quarter.]

[(b) Quarterly reports shall be made on forms provided by the State Board.]

[(c) For purposes of this section quarter ending dates are the last day of November, February, May, and August.]

[(d)] The district shall file an Annual Grant Summary Report on or before September 30 of each year on forms provided by the State Board.

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 December 11, 2003.

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Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 25, 2004
For further information, please call: (254) 773-2250

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CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §§523.1, 523.3 - 523.7

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC §523.1 and §§523.3 - 523.7. A section-by-section discussion of the proposed amendments is included below.

In accordance with the 77th Texas Legislature, on September 1, 2001 the Texas Natural Resources Conservation Commission officially changed its name to the Texas Commission on Environmental Quality. The proposed amendments to §§523.1(1)(B), 523.3(a), (e)(3), (g), (h)(7), 523.4(4), 523.5, and 523.7(b) will accommodate that change.

The proposed amendments to §523.5 will delete an expired Memorandum of Agreement between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission and refer to an existing Memorandum of Understanding at 30 TAC §7.102.

The proposed amendment to §523.6(b)(2) will make a grammatical correction by deleting the letter "a" prior to the word cost-share.

The proposed amendments to §523.6(b)(8), (e)(2)(D), (e)(8), and (f)(5) are pertaining to the requirement for a landowner to also sign an application for cost-share when the applicant is not the landowner so that if the applicant becomes unable or unwilling to carry out the maintenance agreement on the application, the landowner will become responsible for the maintenance agreement.

The proposed amendment to §523.6(d)(2) removes the requirement for soil and water conservation districts (SWCD) to submit requests for cost-share allocations on a specified form and clarifies the date such requests should be made.

The proposed amendment to §523.6(e)(5) clarifies that cost-share funds can be spent only on eligible practices rather than any conservation land treatment measure.

The proposed amendment to §523.6(f)(2)(F) will provide soil and water conservation districts (SWCDs) an additional two months to obligate cost-share funds for approved conservation land treatment measures and notify the applicant of the approval for cost-share and to proceed with installation. It also provides an additional two months before all unobligated funds revert back to the State Board.

The proposed amendment to §523.6(f)(4) is a grammatical correction to replace "is" with "are".

The proposed amendment to §523.6(g)(3) is to make this section consistent with §523.6(g)(5) by requiring repayment of cost-share funds for non-maintained practices and allowing the State Board to grant waiver to this requirement.

The proposed amendment to add §523.6(j) will make the rule consistent with Texas Agriculture Code §201.311 by clarifying the State Board's authority to designate SWCDs to administer cost-share funds.

Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the proposed amendements.

Mr. Isom has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be improved effectiveness of implementing the water quality management plan program.

There is no anticipated cost to small businesses or individuals resulting from the proposed amendments.

Comments on the proposal may be submitted in writing to Rex Isom, Interim Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 232.

The amendments are proposed under the Agriculture Code Title 7, Chapter 201, §201.020 of the code authorizes the State board to adopt rules that are necessary for the performance of its functions under this chapter and §201.026 provides authorization for the State Board to administer a water quality management plan program.

No other statutes, articles, or codes are affected by this proposal.

§523.1. Scope and Jurisdiction.

The Texas State Soil and Water Conservation Board (state board) is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.

(1) Nonpoint source pollution is pollution caused by diffuse sources that are not regulated as point sources and normally is associated with agricultural, silvicultural, and urban runoff, runoff from construction activities, etc. Such pollution is the result of human-made or human-induced alteration of the chemical, physical, biological, and radiological integrity of water. In practical terms nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation. Pollution from nonpoint sources occurs when the rate at which pollutant materials entering water bodies or groundwater exceeds natural rates or total loadings exceed natural loadings.

(A) (No change.)

(B) Confined animal feeding operations may be considered as point or nonpoint sources depending on size, location, and other

considerations. For the purposes of these rules, all confined animal feeding operations not required to obtain a permit from the Texas [~~Natural Resources Conservation~~] Commission on Environmental Quality will be nonpoint sources.

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

§523.3. Water Quality Management Plans.

(a) A water quality management plan is a site specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof which when implemented will achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local soil and water conservation district and Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality to be consistent with state water quality standards. To be certified, a water quality management plan must cover all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural purposes.

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

(e) Practice standards.

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

(3) Practice standards will be developed in consultation with the local soil and water conservation district, with assistance and advice of the USDA, the Natural Resource Conservation Service, Texas Agricultural Extension Service, Texas Forest Service, Texas Agricultural Experiment Station, Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality, the local underground water conservation district and others as determined to be needed by the State Board.

(f) (No change.)

(g) Applicability of state water quality standards. To the extent allowed by available technology, water quality management plan development, approval and certification will be based on state water quality standards as established by the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(h) Water Quality Management Plans for Poultry Facilities.

(1) - (6) (No change.)

(7) The list developed and maintained under paragraph (4) of this subsection will be made available to the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(8) (No change.)

§523.4. Resolution of Complaints.

Complaints concerning the violation of a Water Quality Management Plan or a violation of a law or rule relating to nonpoint source pollution will be addressed as follows.

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

(4) If the person upon whom the complaint was filed fails or refuses to take warranted corrective action, the State Board shall refer the complaint to the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

§523.5. Memorandum of Understanding [~~Agreement~~] between the Texas State Soil and Water Conservation Board and the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

[~~(a) Whereas, the Texas State Soil and Water Conservation Board, herewithin called the Board, is the State agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and whereas the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and whereas, the Board shall establish a water quality management plan certification program, in accordance with Senate Bill (SB) 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and whereas, for purposes of this Agreement, the Board is responsible for nonpoint source pollution abatement activities on all agricultural and silvicultural land as defined by SB 503, Texas 73rd State Legislature; and whereas, the Texas Natural Resource Conservation Commission herewithin known as the Commission, is the State agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and whereas, the Commission has been designated as the lead agency for the Section 319 Program of the Federal Clean Water Act administered by the EPA; and whereas, the commission, as the State agency responsible for the quality of the waters of the State, shall coordinate all water quality programs of the State; and whereas, the Commission shall coordinate all its agricultural and silvicultural nonpoint source pollution activities with the Board; and whereas, for the purpose of this Agreement, the Commission is responsible for regulation of all nonpoint source pollution, including that on agricultural and silvicultural lands as defined by existing rules of the Commission; and whereas, consistent with the intent of Section 319 of the Federal Clean Water Act, the Board and the Commission are committed to the development and implementation of a coordinated nonpoint source pollution program for the State; and whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this Agreement, the Parties, desiring to cooperate in functions and service agree as follows:]~~

[~~(b) Texas Natural Resource Conservation Commission Agrees to:]~~

[~~(1) Administer, for the State, the Federal Clean Water Act, §319, grant program for nonpoint source pollution. The Commission will be responsible for coordinating the preparation of annual grant work programs.]~~

[~~(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The Commission will be responsible for monitoring implementation of work programs, and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and groundwater work program elements.]~~

[~~(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319, management programs for non-agricultural/silvicultural surface and groundwater nonpoint source pollution.]~~

[~~(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the Board via a separate grant with EPA.]~~

[(5) Provide to the Board all current forms, timetables, procedural rules and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.]

[(6) Provide initial (single event) training to selected staff of the Board on Commission complaint investigation procedures. The training will be conducted by Commission staff at a time and location coordinated with the Board.]

[(7) Coordinate with the Board those compliance and enforcement actions relative to agricultural and silvicultural nonpoint source pollution.]

[(8) Provide the Board with access to the Commission's electronic database for all current agricultural waste management plans.]

[(9) Develop state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as defined by this Agreement and SB 503.]

[(c) Texas State Soil and Water Conservation Board Agrees to:]

[(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as defined in this Agreement and SB 503 and funded through the Federal Clean Water Act, §319.]

[(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded to the Board through separate grants from EPA under Federal Clean Water Act, §319. Notify the Commission in writing on any decision made that results in a change in the programmatic or financial status of a project.]

[(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded to the Board by Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.]

[(4) Develop policies for processing citizen complaints related to agricultural and silvicultural NPS pollution. These policies shall be consistent with the practices and standards of the Commission for processing enforcement actions.]

[(5) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.]

[(6) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.]

[(7) Provide the Commission with access to the Board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the Commission.]

[(8) Refer to the Commission in accordance with SB 503 any enforcement action under the jurisdiction of the Commission. The Board shall provide the Commission original documents or "certified copies" of the original documents and hard copies of all records and documents relating to the complaint. Formal documents should be consistent with standard Commission formats.]

[(9) Provide the Commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of individual water quality management plans for agricultural and silvicultural lands.]

[(10) Develop state guidance for agricultural or silvicultural nonpoint source pollution as defined by this Agreement and SB 503.]

[(11) Provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the State's Implementation of the Nonpoint Source Management Plan. The Board will submit the information to the Commission by June 1 of each year. The Commission will include this information in the annual evaluation report required by §319.]

[(d) Both parties agree to:]

[(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.]

[(2) Coordinate efforts in the development and submission of an annual work program (a "single comprehensive package" of project proposals) to EPA for Federal Clean Water Act, §319, funding.]

[(3) Negotiate, on an annual basis, the percentage of the administrative budget of Federal Clean Water Act, §319, base grant funds that will accrue to each party.]

[(4) Maintain each party's existing level of effort (LOE) required by the EPA for the implementation of §319 programs/projects.]

[(5) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.]

[(6) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.]

[(7) Meet semiannually to review and discuss the State's nonpoint source water quality program.]

[(8) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.]

[(9) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.]

[(10) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Groundwater."]

[(11) Meet at least 90 days prior to expiration of this Agreement to review conditions of this Agreement for the purpose of determining the need for renewal.]

[(12) Adopt this Agreement by Rule.]

[(13) Handle all complaints in the following manner:]

[(A) The Board shall investigate all complaints against facilities for which there is a certified water quality management plan or one has been applied for.]

[(B) The Commission shall investigate all complaints against facilities for which a waste management plan has been approved, a permit has been issued, or a permit is required in accordance

with 30 TAC Chapter 321 (concerning Control of Certain Activities by Rule).]

[(C) Any general complaint received by the Commission will be investigated to determine whether a permit is required of such a facility. If it is determined a permit is not required, the Commission will refer the complaint to the Board, as soon as possible. Confined animal feeding operations will have the opportunity to pursue either approval of a waste management plan through the Commission or a corrective action plan or water quality management plan through their local soil and water conservation district and the Board, as the case may require.]

[(D) Any general complaint received by the Board will be investigated and a determination made as to whether such a facility will need to implement a corrective action plan. Those facilities which require a permit under 30 TAC Chapter 321 will be referred to the Commission as soon as possible.]

[(E) The Commission shall investigate all complaints associated with confined animal feeding operations for which there has been an impact to aquatic life to determine whether a permit will be required. If it is determined a permit is not required, the Commission will refer the complaint to the Board as soon as possible.]

[(e) General Conditions:]

[(1) Term of Agreement--The term of this agreement shall be from effective date to August 31, 1995.]

[(2) Notice of Termination--Any party may terminate this Agreement upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other party can this Agreement be modified.]

[(3) Cooperation of Parties--It is the intention of the parties that the details of providing the services in support of this Agreement shall be worked out, in good faith, by both parties.]

[(4) Activities conducted under this Agreement will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987; and other nondiscrimination statutes, namely the Rehabilitation Act of 1973, §504; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Americans With Disabilities Act of 1992, which provide that no person in the united States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.]

[(5) Notices--Any notices required by this Agreement to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: P.O. Box 13087, Austin, Texas 78711-3087; Texas State Soil and Water Conservation Board, Attn: P.O. Box 658, Temple, Texas 76503-0658.]

[(6) Effective Date of Agreement--This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.]

§523.6. Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures.

(a) (No change.)

(b) Definitions--For the purposes of these rules the following definitions shall apply.

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

(8) Eligible person--Any of the land holders eligible to apply for cost-share assistance, or any person designated to represent the applicant as provided by a durable power of attorney, court order, or other valid legal document.

(9) - (18) (No change.)

(c) (No change.)

(d) Administration of Funds

(1) (No change.)

(2) Requests for Allocations. SWCDs within areas designated for cost-share program must submit requests for a cost-share fund allocation to the State Board by September 1st each year [on forms provided by the State Board, and shall include all information required by such forms].

(3) (No change.)

(e) Eligibility for Cost-Share Assistance

(1) (No change.)

(2) In accordance with the terms of the maintenance agreement an eligible person may receive cost share only once for an operating unit. The State Board on a case by case, project or watershed basis in consultation with the soil and water conservation district may grant a waiver to this requirement in situations where:

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

(D) A landowner has assumed the responsibilities of a maintenance agreement in cases where the landowner was not the applicant.

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

(5) Eligible purposes. Cost-share assistance shall be available only for those eligible practices [conservation land treatment measures] included in an approved resource management plan and determined to be needed by the SWCD to:

(A) - (B) (No change.)

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

(8) Persons required [authorized] to sign applications and agreements. All applications and agreements shall be signed by:

(A) The eligible person, and;

(B) the landowner, in cases where the eligible person does not hold title to the land constituting the operating unit. [Any person designated to represent the eligible person, provided an appropriate notarized durable power of attorney has been filed with the SWCD office, or;]

[(C) The responsible person or administrator, in cases of trusts or estates, provided that letters of administration or letters of testamentary have been submitted to the SWCD in lieu of a power of attorney.]

(f) Cost-Share Assistance Processing Procedures.

(1) (No change.)

(2) Responsibilities of SWCDs. SWCDs shall:

(A) - (E) (No change.)

(F) Obligate funds for the approved conservation land treatment measures that can be funded and notify the applicants that his/her conservation land treatment measure(s) has/have been approved

for cost-share and to proceed with installation. Allocated funds must be obligated by the last day of April [~~February~~] of the fiscal year allocated. All unobligated allocations shall revert back as of May [~~March~~] 1st of that fiscal year.

(G) (No change.)

(3) (No change.)

(4) Performance agreement. As a condition for receipt of cost-share assistance for conservation land treatment measures, the eligible person receiving the benefit of such assistance shall agree to perform those measures in accordance with standards established by Texas State Soil and Water Conservation Board. Completion of the performance agreement and the signature of the eligible person are [~~is~~] required prior to payment.

(5) Maintenance Agreement. As a condition for receipt of cost-share assistance, the person(s) receiving the assistance shall agree to implement and maintain all measures in the certified resource management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified resource management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the cost-shared practice(s) as established by the State Board or for a period of two years after the certified resource management plan is completely implemented, whichever period of time is longer. The landowner must sign the application for cost-share pursuant to subsection (e)(8)(B) of this section, and assumes the responsibility of the maintenance agreement if the applicant becomes incapable or unwilling to fulfill the obligations of the maintenance agreement. Completion of the maintenance agreement and all appropriate signatures are [~~signature of the eligible person is~~] required prior to payment.

(6) - (10) (No change.)

(g) Maintenance of Practices.

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

(3) The SWCD will [~~may~~] require refund of any or all of the cost-share paid to an eligible person when the applied conservation land treatment measure(s) has not been maintained in compliance with applicable design standards and specifications for the practice during its expected life as agreed to by the eligible person. The State Board may grant a waiver to this requirement on a case-by-case basis in consultation with the SWCD.

(4) - (5) (No change.)

(h) - (i) (No change.)

(j) Pursuant to TEXAS AGRICULTURE CODE §201.311, one or more SWCDs may be designated to administer portions of this section as determined by the State Board.

§523.7. Incentives for Composting Animal Manure.

(a) (No change.)

(b) Reimbursement Payment. In watershed areas specified by the State Board, expenses for hauling manure, consistent with all provisions in this section (§523.7 Incentives for Composting Animal Manure), to compost facilities certified by the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (TCEQ) [~~(TNRCC)~~] and approved by the State Board, will be paid by the State Board according to reimbursement rates established under subsection (c) of this section, Reimbursement Rates.

(c) - (j) (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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Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
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TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.5

The Texas Bond Review Board proposes amendments to §181.5, concerning policies and procedures. Section 181.5 relates to submission of final reports following issuance of state securities. The proposed change would provide that reports on such securities issued in the form of commercial paper would be submitted for semi-annual periods.

James T. Buie, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Buie has also determined that during the five-year period there will be no probable economic cost to persons required to comply with the revised rule. The public benefit will be realized by more efficient reporting on issuance of commercial paper. There will be no effect on small or micro businesses.

Comments may be submitted in writing to: James T. Buie, Executive Director, Texas Bond Review Board, PO Box 13292, Austin, Texas 78711-3292; or via email to: bonds@brb.state.tx.us

The amendments are proposed under Chapter 1231, Government Code, which gives the Texas Bond Review Board the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

Chapter 1231, Government Code is affected by these proposed amendments.

§181.5. Submission of Final Report.

(a) Within 60 days after the signing of a lease-purchase agreement or delivery of the state securities and receipt of the state security proceeds, the issuer or purchaser, as applicable, shall submit one original of a final report to the bond finance office and a single copy of the final report to the Texas Comptroller of Public Accounts, provided that for state securities issued in the form of commercial paper notes, the reporting requirements of subsection (d) of this section shall be applicable.

(b) (No change.)

(c) A final report for all state bonds other than lease-purchase agreements must include:

(1) all actual costs of issuance, including, as applicable, the specific items listed in §181.3(d)(10)[~~(8)~~] and (11)[~~(9)~~] of this title (relating to Application for Board Approval of State Bond Issuance), as well as the underwriting spread for competitive financings and the private placement fee for private placements, all closing costs, and any other costs incurred during the issuance process; and

(2) (No change.)

(d) In lieu of the reporting requirements of subsection (a) of this section, an issuer of state securities issued in the form of commercial paper notes shall submit on original of a report to the bond finance office for each semi-annual period for so long as the issuer has authority to issue commercial paper under proceedings approved by the Board or exempt from approval pursuant to §181.9 of this title. The report shall contain the following information with respect to the semi-annual period immediately preceding the date of filing of the report:

(1) the aggregate principal amount of commercial paper that the issuer is authorized to issue and have outstanding at any one time;

(2) the aggregate principal amount of commercial paper outstanding as of the end of such semi-annual period;

(3) the aggregate principal amount of commercial paper issued to fund project costs during such semi-annual period;

(4) a list of the projects for which commercial paper was issued during such semi-annual period;

(5) as used in this subsection, term "semi-annual period" means each of the following six-month periods ending the last day of February and August of each year.

(e) [~~(d)~~] Submission of this final report is for the purpose of compiling data and disseminating information to all interested parties. The cost of reproduction of any and all portions of the final documents shall be borne by each requesting party.

(f) [~~(e)~~] The bond finance office shall prepare and make available to the members of the Board [~~bond review board~~] a summary of each final report within 30 days after the final report has been submitted by the issuer. This summary shall compare the estimated costs of issuance for the items listed in §181.3(d)(10)[~~(8)~~] and (11)[~~(9)~~]of this title contained in the application for approval with the actual costs of issuance listed in subsection (c)(1) of this section submitted in the final report. This summary must also include other information that in the opinion of the bond finance office represents a material addition to or a substantial deviation from the application for approval.

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 December 11, 2003.

TRD-200308539
James T. Buie
Executive Director
Texas Bond Review Board
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 463-9890

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 181. GENERAL RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §181.28

The Texas Commission for the Deaf and Hard of Hearing proposes amendments to §181.28. The amendments are proposed to add requirement for Counselor in Training (CIT), Camp Fee and rewording relative to staffing, campsite, application fee and behavior problems.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be that the program will be able to cover the costs of running the program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Ann Horn, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.28. Camp Sign.

(a) Description of Services. Camp SIGN is a learning environment for students who are deaf or hard of hearing which is free of communication barriers. The goal is to have all students who are deaf or hard of hearing regardless of their communication mode participate in the program.

(b) Eligibility. Camp is open to boys and girls who are deaf or hard of hearing between the ages of 8 and 17 and residents of Texas.

(c) Counselor in Training (CIT). A program that focuses on developing leadership skills to prepare boys and girls aged 16 and 17, who are former campers and meet the CIT criteria established by the Camp SIGN Committee, to become future camp counselors and leaders.

(d) Staffing. Camp SIGN staff are chosen on the basis of criteria to accommodate the needs of the campers and to serve as role models [~~for the campers~~]. Staff are recruited from professional disciplines [~~professionals~~] working [~~in the field~~] with individuals who are deaf or hard of hearing. Staff must be able to communicate effectively with children who use American Sign Language, English or other modes of communication. Junior Counselor Staff must be at least 18 years old and Senior counselor staff must be at least 21 years old. Staff are hired by the contracted campsite based on recommendations of the Commission.

(e) Campsites. Any [~~contracted~~] campsite will be obtained through competitive bid or through donation. The campsite must be ADA accessible, and provide adequate facilities and a variety of learning experiences for the campers.

(f) Application Fee. A fee of $35 is required to process an application for Camp SIGN. This fee is refundable only upon written request if the child is determined ineligible or if camp space is filled to capacity.

(g) Camp Fee[~~Sliding Scale Fee~~]. Upon receipt of the application the family economic status is reviewed, and a sliding scale may be applied. The fee may be lowered or waived entirely.

(h) Behavior Problems. Children that have behavior problems that constantly disrupt camp activities or threaten the safety and comfort other campers or staff will be sent home and all fees forfeited.

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 December 15, 2003.

TRD-200308572
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 407-3250

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CHAPTER 182. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM
SUBCHAPTER B. PROGRAM ELIGIBILITY

40 TAC §182.21

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §182.21. The amendment is proposed to (a) eliminate case workers as certifiers, (b) to require all social workers to be licensed and (c) require certifiers to attest that applicants will be able to access the current telephone network system using the equipment provided by vouchers issued through this program.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be ensuring all certifiers have professional qualifications and skills necessary to appropriately certify STAP applicants. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Eileen Alter, STAP Program Specialist, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711.

The amendment is proposed under the Texas Administrative Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§182.21. Entities Authorized to Certify Disability.

(a) An applicant must be certified as a person with a disability which interferes with the person's ability to access the telephone network by one of the following:

(1) licensed hearing aid specialist;

(2) licensed audiologist;

(3) licensed physician or nurse;

(4) appropriate state or federal agency representative;

(5) state certified teacher of individuals who are deaf or hard of hearing;

(6) licensed speech pathologist;

(7) state certified teacher of individuals who are visually impaired;

(8) state certified teacher of individuals who are speech impaired;

(9) state certified special education teacher;

(10) director of appropriate agency contracted service provider or designated representative (council);

(11) director [~~or designated representative~~] of appropriate independent living center; or

(12) licensed social worker [~~or case worker~~].

(b) By certifying an application, a certifier is attesting to:

(1) being eligible to certify under the provisions of the law;

(2) having assessed the applicant's disability to determine that the applicant is eligible;

(3) having reviewed the information on the application to ensure that the form is completed properly and all requested information has been provided; and

(4) having determined that the applicant will be able to benefit from the specialized telecommunications devices or services requested on the application by access to the telephone network system.

(c) An application must be certified before the commission can process and approve the application.

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 December 15, 2003.

TRD-200308571
David Myers
Executive Director
Texas Commission for the Deaf and Hard Hearing
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 407-3250

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PART 9. TEXAS DEPARTMENT ON AGING

CHAPTER 260. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

40 TAC §260.11

The Texas Department on Aging proposes an amendment to §260.11, concerning Ombudsman Services.

The only revision is new language added to subsection (f)(1)(C). The amendment is necessary to include a change previously approved by the Texas Board on Aging.

Nila Pedersen, Chief Accountant, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state agencies required to comply with the rule as proposed.

Ms. Pedersen also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an updated rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

Comments on the proposal may be submitted to Gary Jessee, Director Office of AAA Support and Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711. All comments must be written and delivered via mail, in person, or facsimile. E-mail and verbal comments cannot be accepted. All comments must be received within 30 calendar days following the date of publication of the proposed rules in the *Texas Register.*

The amendment is proposed under Texas Government Code, §2161.003, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The amendment also implements or affects Texas Human Resources Code, Subchapters C and D, and §101.022(b) and §101.022(d). The amendment implements Titles III and VII of the Older Americans Act of 1965, as amended, 42 U.S.C.A., §§3001, et seq. (West 2002).

§260.11. Ombudsman Services.

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

(f) Responsibilities of contractors to operate local ombudsman entities. Contractors shall be either an area agency on aging or an entity defined by the Board. The local ombudsman entity shall:

(1) be an organization with a responsive and visible presence in its region. It shall:

(A) - (B) (No change.)

(C) have a visible and active presence in long-term care facilities sufficient for clients and families to have access to ombudsman services that promote or improve quality of care and that result in the timely identification and resolution of complaints and concerns. In addition to regular visits by certified ombudsmen, each licensed nursing home shall be visited a minimum of one time, and more often as necessary, each year by the managing local ombudsman or a paid staff ombudsman of the local ombudsman entity. The local ombudsman entity may establish affiliations with other volunteer groups to exchange information and identify advocacy needs to support facility coverage.

(D) - (F) (No change.)

(2) - (15) (No change.)

(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.

Filed with the Office of the Secretary of State on December 12, 2003.

TRD-200308566
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Earliest possible date of adoption: January 25, 2004
For further information, please call: (512) 424-6857

♦ ♦ ♦

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 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.5

The Texas County and District Retirement System has withdrawn from consideration the proposed new §105.5 which appeared in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9433).

Filed with the Office of the Secretary of State on December 9, 2003.

TRD-200308445
Tom Harrison
Director, Legal and Governmental Relations
Texas County and District Retirement System
Effective date: December 9, 2003
For further information, please call: (512) 328-8889

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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 the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in 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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 95. UNIFORM COMMERCIAL CODE

The Office of the Secretary of State adopts amendments to Chapter 95, Subchapter A, §§95.108, 95.113, and 95.114, concerning General Provisions; Subchapter B, §95.204, concerning Acceptance and Refusal of Documents; Subchapter C, §95.300, concerning UCC Information Management System; Subchapter F, §§95.400, 95.407, 95.408, concerning Filing and Data Entry Procedures; Subchapter G, §95.500, concerning Search Requests and Reports; and Subchapter H, §95.601, concerning Other Notices of Liens. The amended sections are adopted without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9623)

The purpose of the adoption of the amendments is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

The amended sections provide current filing policies and procedures for the Uniform Commercial Code Section.

No comments were received regarding the adoption of the amendments.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§95.108, 95.113, 95.114

The amendments are adopted under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308497
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §95.204

The amendment is adopted under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308498
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER C. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §95.300

The amendment is adopted under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308501
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER F. FILING AND DATA ENTRY PROCEDURES

1 TAC §§95.400, 95.407, 95.408

The amendments are adopted under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308502
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER G. SEARCH REQUESTS AND REPORTS

1 TAC §95.500

The amendment is adopted under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308503
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER H. OTHER NOTICES OF LIENS

1 TAC §95.601

The amendments is adopted under §§9.501 - 9.527, Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308504
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §95.207

The Office of the Secretary of State adopts the repeal of Chapter 95, Subchapter B, §95.207, concerning Acceptance and Refusal of Documents, without changes to the proposal as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9626) and will not be republished.

The purpose of the repeal is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

No comments were received regarding the repeal of the section.

The repeal is adopted under §§9.501 - 9.527 Texas Business and Commerce Code, §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, §§70.401 - 70.410 Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22 Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subchapter E of Chapter 70, Texas Property Code, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308499
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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CHAPTER 95. UNIFORM COMMERCIAL CODE

The Office of the Secretary of State adopts new Chapter 95, Subchapter B, §95.207, concerning Acceptance and Refusal of Documents and Subchapter H, §95.607, concerning Other Notices of Liens. The new sections are adopted without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9627).

The purpose of the adoption of the new sections is to conform to national model administrative rules promulgated by the International Association of Commercial Administrators and to more accurately reflect current filing policies and procedures due to legislative changes.

The new sections provide current filing policies and procedures for the Uniform Commercial Code Section.

No comments were received regarding adoption of the new sections.

SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §95.207

The new section is adopted under §§9.501 - 9.527, Texas Business and Commerce Code (effective July 1, 2001), §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308500
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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SUBCHAPTER H. OTHER NOTICES OF LIENS

1 TAC §95.607

The new section is adopted under §§9.501 - 9.527, Texas Business and Commerce Code (effective July 1, 2001), §§35.01 - 35.09, Texas Business and Commerce Code, §§14.001 - 14.007, Texas Property Code, Chapter 128, Texas Agriculture Code, Chapter 188, Texas Agriculture Code, §42.22, Texas Code of Criminal Procedure, and §§51.901 - 51.905, Texas

Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer Subchapter D of Chapter 9, Texas Business and Commerce Code, Subchapter A of Chapter 35, Miscellaneous, Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5, Texas Agriculture Code, Subtitle E of Title 6, Texas Agriculture Code, and Subchapter J of Chapter 51, Texas Government Code.

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 December 11, 2003.

TRD-200308505
Lorna Wassdorf
Director, Statutory Filings Division
Office of the Secretary of State
Effective date: January 1, 2004
Proposal publication date: November 7, 2003
For further information, please call: (512) 463-5701

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 50. 2001 LOW INCOME HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§50.1 - 50.16

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§50.1-50.16, without changes, as published in the August 29, 2003, issue of the *Texas Register* (28 TexReg 7097) concerning the Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules. The sections are repealed in order to enact new sections conforming to the requirements of regulations 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. The repeal of these rules was approved by the Governor on December 1, 2003 pursuant to §2306.6724(c) of the Texas Government Code.

No comments have been received regarding the adoption of the repeal.

The repeal sections are adopted pursuant to the authority of Chapters 2306, 2001, and 2002, Texas Government Code, V.T.C.A., and Section 42 of Internal Revenue Code of 1986, as amended, (26 U.S.C. Section 42) which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing credit allocations in the State of Texas.

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

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 December 15, 2003.

TRD-200308588
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 4, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 475-4595

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CHAPTER 50. 2004 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§50.1 - 50.24

The Texas Department of Housing and Community Affairs adopts, with changes, new §§50.1-50.24, concerning the 2004 Housing Tax Credit Qualified Allocation Plan and Rules to the proposed text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7098). The adoption of these rules was approved by the Governor on December 1, 2003 pursuant to §2306.6724(c), Texas Government Code.

These rules, with technical changes, are being adopted to provide procedures for the allocation by the Department of certain housing tax credits available under federal income tax laws to owners of qualified affordable rental housing developments.

On August 29, 2003, the proposed 2004 Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP) was published in the *Texas Register*. The comment period commenced on August 29, 2003 and ended on October 10, 2003. In addition to publishing the document in the *Texas Register*, a copy of the QAP was published on the Department's web site and made available to the public upon request. The Department held ten public hearings across the state to gather feedback on the draft QAP. In addition to the comments received at the public hearings, the Department received substantial written comments.

The scope of public comment concerning the QAP pertains to the following sections.

§50.2 - Coordination with Rural Agencies

Comment: One comment requests that the phrase capacity building efforts relating to the rural allocation be revised to development efforts to emphasize that the Office of Rural Community Affairs (ORCA) is concerned with all development efforts in rural areas. Separate comment suggests that because of the elimination of the 5% USDA set-aside, referring to financing in cooperation with ORCA on rural developments is not consistent with other QAP language.

Department Response: The Department does not agree that the word development should be substituted for capacity building because §2306.6723, Texas Government Code, specifically utilizes the term capacity building. All other language in this section is appropriate for the QAP revisions. No changes are proposed.

Board Response: Department's response accepted.

§50.3(1) - Proposed Definition of Administrative Deficiencies

Comment: The commenter suggests that Administrative Deficiencies should allow for a 10 day response period and that the definition be revised to provide for alternative dispute resolution as required by SB 264.

Department Response: The Department concurs that a 10 day response period is acceptable for Administrative Deficiencies, however that language will be added under §50.9(d)(3) where the process itself is more fully described.

Board Response: Department's response accepted.

§50.3(2) - Proposed Definition of Affiliate

Comment: Comment suggests that the Department expand the definition of Affiliate to include relatives so that the Department avoids the possibility of a person asserting that a relative or a spouse is not an affiliate. Other comment requests clarification as to whether the last sentence in the definition is intended to include only those General Partners and special Limited Partners who have at least a 10% ownership interest, or all General Partners and Special Limited Partners.

Department Response: While the Department concurs with the importance of increased disclosure, staff cannot recommend that the definition of Affiliate include spouses, parents and children at this time because the change would affect individuals not affected by the proposed rule, possibly requiring further public comment; therefore, staff will recommend that this issue be addressed by the 2005 Working Group. Regarding the requested clarification as to whether the last sentence in the definition is intended to include only those General Partners and special Limited Partners who have at least a 10% ownership interest, or all General Partners and Special Limited Partners, the current language is explicit in its requirement to include all Principals of General and Special Limited Partners with a 10% ownership and this change is not recommended.

Board Response: Department's response accepted.

§50.3(12)(C) - Proposed Definition of At-Risk Development

Comment: Comment requests that the Department modify the definition to assure that the set-aside intended by the legislature to preserve affordable housing is not used for the new construction at a different location than the property that is presumably being preserved and recommended that HOPE VI be removed from the set-aside. Other comment commended the Department for including HOPE VI funding in the At-Risk set-aside. Comment was also received that it was unclear whether all affordability on the development needed to be at-risk of being lost, or whether one source could be expiring, but another source was still going to remain with the property.

Department Response: The Department agrees that to qualify as At-Risk, the Development should be proposed for the same site as the property whose affordability is expiring. The Department recommends retaining the HOPE VI eligibility within the set-aside. While staff feels that the definition only permitted those developments actually losing affordability on the property, staff also recommends clarifying that the development must be at-risk of losing its affordability.

(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, except that a Housing Authority proposing reconstruction of public housing, supplemented with HOPE VI funding, will be qualified as an At-Risk Development if it meets the requirements described in §50.7(b)(3) of this title. Redevelopment of any type must include the same site as the original development to qualify in this set-aside.

(D) Developments must be at risk of losing all affordability 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.

Board Response: The Board also added language to the definition that would expand the HOPE VI exception to public housing authorities that are using their capital grant funds.

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, except that a Housing Authority proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund, will be qualified as an At-Risk Development if it meets the requirements described in §50.7(b)(3) of this title.

§50.3(28)(A) - Proposed Definition of Development

Comment: One comment requests that the term contiguous be defined to include any parcels connected by public rights-of-way and easements.

Department Response: Staff does not feel that the concept of contiguity needs to be defined in the QAP. No further clarification is necessary and no change is proposed.

Board Response: Department's response accepted.

§50.3(47)(G)- Proposed Definition of Ineligible Building Types

Comment: Overwhelming opposition was voiced against the proposed restrictions of 1, 2, and 3 bedroom units. Comment suggests that a typical multi-family development, whether market rate or affordable, will demand a specific unit mix need that is truly determined by the local market and type of tenancy (elderly or transitional); these vary greatly throughout the state. Market dynamics in a particular submarket should be of paramount consideration in determining the appropriate unit mix for a Development; therefore the mix should not be proscribed by state rule. It was also commented that requiring all new construction developments to have at least 3 different sizes of bedrooms will be a major mistake and adversely affect the financial feasibility of future developments. It was also recommended that single-family style developments and transitional developments have an exception to this restriction.

Additional comment proposed that 4-bedroom units be re-instated. Comment suggests that by allowing 4-bedroom units as eligible units, it shows that TDHCA is sensitive to the needs of communities with large families, and also allows tax-credit developments to offer an alternative to traditional housing authority public housing that often offers up to 5 and 6 bedroom units along the border. Comment requests that a limit of 15% be placed on three bedroom units on elderly developments. Comment also appreciates the specificity in the rule to prohibit any Development that is not in accord with the Department's policy supporting housing which integrates people with disabilities into the general population.

Department Response: Staff concurs that market dynamics in a particular submarket should be the driving factor in determining the appropriate unit mix for a Development and recommends that the section be removed entirely. However, as an alternative option, staff recommends the following which is less restrictive than the language proposed in the draft QAP, but still retains some limitations, and also allows the exceptions requested for single family development and transitional housing:

(G) "Any Development involving new construction (other than a Qualified Elderly Development, a single family development or a transitional housing development) in which any of the designs in clauses (i) through (iii) of this subparagraph are proposed. For purposes of this limitation, a den, study or other similar space that could reasonably function as a bedroom will be considered a bedroom.

(i) more than 60% of the total Units are one bedroom Units; or

(ii) more than 60% of the total Units are two bedroom Units; or

(iii) more than 40% of the total Units are three bedroom Units."

Board Response: Department's response was revised to reflect different percentages for each unit type.

(G) "Any Development involving new construction (other than a Qualified Elderly Development, a single family development or a transitional housing development) in which any of the designs in clauses (i) through (iii) of this subparagraph are proposed. For purposes of this limitation, a den, study or other similar space that could reasonably function as a bedroom will be considered a bedroom.

(i) more than 60% of the total Units are one bedroom Units; or

(ii) more than 45% of the total Units are two bedroom Units; or

(iii) more than 35% of the total Units are three bedroom Units."

§50.3(53) - Proposed Definition of Person

Comment: Comment critiqued the definition of Person and thought that the language was uncertain in meaning and was open to interpretation.

Department Response: The Department is satisfied with the existing proposed definition. The current language was drafted from the input of the 2004 QAP working group which thoroughly researched the term and made the recommendations that accurately represent the group. No changes are proposed.

Board Response: Department's response accepted.

§50.3(54)(A)(iii) - Proposed Definition of Persons with Disabilities

Comment: Comment indicates that there is a discrepancy between the definition of the persons with the disabilities in this section with the definitions found in other TDHCA documents. The functionality or ability of a person with a disability may be much improved by adequate housing. The Department of Housing and Urban Development (HUD) definition found in 24 CFR 5.403 offers the recommended wording.

Department Response: Staff concurs and recommends adding the HUD definition to the existing definition.

"(54) 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, or

(B) has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. Section 15002, or

(C) has a disability, as defined in 24 CFR §5.403."

Board Response: Department's response accepted.

§50.3(57) - Proposed Definition of Principal

Comment: Comment suggested that, in the interest of full disclosure and having a transparent process, a principal should be defined as anyone with an ownership interest in the corporation or entity that will own the development. Additional comment suggests that, in order to clarify the definition as it relates to limited liability companies, the last phrase in the definition should be revised to cover professional managers who do not have ownership interest in the limited liability company, but do have the authority to act for the limited liability company.

Department Response: Although staff does value transparency of the application process, the administrative burden of rule implementation must be considered. Staff recommends keeping the original change to 10% ownership and does not recommend that the definition cover professional managers.

"(A) partnerships, Principals include all General Partners and Special LP and Principals with at least 10% ownership interest;"

Board Response: Department's response accepted.

§50.3(66) - Proposed Definition of Qualified Nonprofit Development

Comment: Comment recommends revising the definition to include developments where the nonprofit is the controlling entity instead of the sole entity. Additionally, comment recommends the definition include a development in which the General Partner is a limited liability company whose sole member is a Qualified Nonprofit Organization because most nonprofits that develop affordable housing are utilizing limited liability companies on a development-by-development basis.

Department Response: Staff concurs with both recommendations.

"(66)Qualified Nonprofit Development - A Development in which a Qualified Nonprofit Organization, (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, 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)."

Board Response: Department's response accepted.

§50.3(77) - Proposed Definition of Third Party

Comment: Comment was received that suggests expanding the definition to include affiliates and others that will receive any portion of the developer fee. If a person receives some of the developer fee, then that person will be materially interested in the development and will not have a detached role.

Department Response: Staff concurs with the recommended language.

"Third Party- A Third Party is a Person who is not an:

Applicant, General Partner, Developer, or General Contractor, or an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor, or

(C) Person(s) receiving any portion of the contractor fee or developer fee."

Board Response: Department's response accepted.

§50.3(81) - Proposed Definition of Unit

Comment: Comment requests clarification to ensure that a single family rent to own development will be an authorized unit.

Department Response: The current language is consistent with §2306.6702, Texas Government Code, as amended by SB264. Therefore, no change is proposed.

Board Response: Department's response accepted.

§50.3 - Proposed Definition of Exurban Regional Allocation

Comment: Comment recommends that a definition of Exurban Regional Allocation be added to clarify the regional allocations among exurban, rural and urban areas. Definitions were also recommended for Rural Regional Allocation, Urban City, and Urban Regional Allocation.

Department Response: §2306.111(d), Texas Government Code, as revised by §9 of SB264 requires regional allocations among rural and urban/exurban areas. The current language is consistent with the legislative requirements of this section. No change is recommended.

Board Response: Department's response accepted.

§50.5- Ineligibility

Comment: It is recommended that a 10 day period be provided to allow for a cure in a deficiency for this section.

Department Response: Staff concurs that the ineligibility section should permit a deficiency period as defined in the Administrative Deficiency Process section of the QAP.

"(e) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) through (d) of this section will first be notified in accordance with the Administrative Deficiency process described in §50.9(d)(3) of this title. They may also utilize the appeals process described in §50.18(b) of this title."

Board Response: Department's response accepted.

§50.5(a)(1-3)- Ineligibility

Comment: Comment suggests any contractor or other Person associated with the applicant that is on the HUD debarred list or that has been convicted of fraud be prevented from participating in the tax credit program because, as drafted, an applicant will be allowed to conduct business with a contractor or other person that is on the HUD debarred list or that has been previously convicted of fraud. Other comment indicates that subpart (3) should be revised in the interest of certainty since federal tax liens are inchoate.

Department Response: The draft QAP, as proposed, adequately included those individuals and entities that the Department is best able to monitor and enforce. Staff does not agree that the liens must be final. No changes are proposed.

Board Response: Department's response accepted.

§50.5(a)(7) and (8)- Ineligibility

Comment: Comment suggested that all of the other subparagraphs of §50.5(a) deal with the nature of the applicant or developer, and because this section and subparagraph (8) are related to the location of the development itself, they should be moved to §50.3. Additionally, comment provided recommended language that further clarifies the intent of the provision from SB 264 by adding "has obtained prior approval of the Development from the governing body of the appropriate municipality or, if located outside of the municipality, the county…" to subparagraph. Comment was also made that, to remove the ineligibility of properties proposed in a city that has twice the state average of units per capita, there is a requirement to obtain "prior approval" of the governing political body. It is recommended to clarify that the prior approval be in the form of a resolution or other document from the governing body and not be obtaining building permits.

Department Response: Staff does not agree that subparagraphs (7) or (8) should be moved. Current language regarding location outside of a municipality is legislated as written by §2306.6703, Texas Government Code, as amended, and cannot be changed. Staff agrees that clarification of "prior approval" is merited and recommends the change in language below.

"(A) has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development in the form of a resolution; and…"

Board Response: Department's response accepted.

§50.5(a)(8)(A)- Ineligibility- One Mile Rule

Comment: Comment requested clarification of this subsection because it is confusing to the reader. It is recommended that the clause "regardless of whether the Developments serve families, elderly individuals, or another type of households" be stricken as being redundant. Comment was received that it was unclear how ties between developments (both 9% and 4%) would be handled throughout the year and how the 3 year mark is determined.

Department Response: Pursuant to §2306.6703, Texas Government Code, the language regarding types of families served can not be altered; no change is recommended. To ensure clarity in evaluating this section, a reference has been added to how "ties" will be handled on timing for this rule, the one mile in the same year rule and the capture rate.

"(B) has received an allocation of Housing Tax Credits (including Tax Exempt Bond Developments) for 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"

Adding as (8)(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. For example, a Development whose credits were approved by the Board on March 15, 2002, could not have a new Development located within one mile until March 16, 2005. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(h)."

Board Response: Department's response accepted.

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

Comment: Comment recommends that this section be revised in the interest of protecting the program from undeserving participants. Comment suggests that disqualification is appropriate for entities that fail to place buildings in service or remove buildings from service. It is not appropriate to disqualify someone for failing to meet the artificial deadlines that do not have a meaningful effect on the prior allocation of credits. If someone previously had failed to meet the "deadline for commencement of substantial construction" while still meeting the schedule for completing construction, no credits have been lost and the housing provided within the time limits. Thus, there is no valid reason for disqualifying that person. Recommended language expands the entities under this subsection to include any Affiliate of the Applicant or the Development Owner that is active in the ownership control in one or more tax credit properties in the United States, not just Texas.

Department Response: The Department does not concur with the comments regarding disqualification. Because the language allows an exception to ineligibility if a Department extension was granted, no Applicant will be unduly penalized- only those that do not adhere the Department's procedures. No changes are recommended.

Board Response: Department's response accepted.

§50.5(b) - Disqualification and Debarment

Comment: Comment provided suggested that language be added to emphasize the disqualification of (a) former Department board members and executives, (b) entities previously removed from transactions for failure to perform obligations, and (c) applicants violating terms of bond transaction.

Department Response: Staff does not recommend any changes to this section because the language is explicit as drafted and the Department feels that the disqualification and debarment section is adequate.

Board Response: Department's response accepted.

§50.5(b)(3)&(4) - Disqualification and Debarment

Comment: Comment recommends change in this subparagraph to clarify and emphasize that a material violation of the LURA or other material noncompliance with program rules includes affiliates of the Applicant, Development Owner, Developer or Guarantor.

Department Response: The definition for Applicant already includes Affiliates so by using the term Applicant, all affiliates are already included. No change is proposed.

Board Response: Department's response accepted.

§50.5(b)(5) - Disqualification and Debarment

Comment: Comment recommends that the failure to pay fees after 10 days notice that the fees are due should be a disqualification that includes affiliates of the Developer. One should not be able to avoid this prohibition by merely changing corporate names.

Department Response: The current draft already includes disqualification after 10 days by having included the Administrative Deficiency process into this section of the QAP. The wording, emphasizing Applicant (which includes affiliates) would preclude mere corporate name changes to avoid the fee payment requirement. No further change is recommended.

Board Response: Department's response accepted.

§50.5(b)(6) - Disqualification and Debarment

Comment: For consistency of drafting for comment, the disqualification for a site deemed unacceptable is recommended to be relocated to §50.5(b)(9)of this title.

Department Response: Staff does not recommend a change in the location of this section because this change is unnecessary.

Board Response: Department's response accepted.

§50.5(c)(4) - Certain Applicant and Development Standards

Comment: Comment suggests that the section be modified to prohibit the Development Owner from contracting with any person on the HUD debarred list, not just the "Developer". Good public policy demands that the Department do whatever is necessary to prevent individuals with a tarnished past from benefiting from the housing credit program.

Department Response: While the Department concurs that good public policy demands that the Department prevent individuals with a tarnished past from benefiting from the housing credit program, the current language is verbatim from §2306.223, Texas Government Code. No change is proposed.

Board Response: Department's response accepted.

§50.6(a) - Site and Development Restrictions, Floodplain

Comment: Comment suggests that, while the restriction on floodplain is generally appropriate, in the interest of preserving existing USDA and HUD properties, an exception should be made for rehabilitation properties receiving other federal assistance.

Department Response: In the interest of promoting federal funding obligations and to ensure that those properties are well maintained, staff recommends allowing the exception for properties with federal or state funding.

"(a) Floodplain. Any Development proposing new construction 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 Developments proposing rehabilitation, 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: Department's response accepted.

§50.6(c) - Site and Development Restrictions, Scattered Site

Comment: It was recommended that staff amend this section to clarify that single family rent-to-own units are also an acceptable exception for utilizing scattered site.

Department Response: Section 42 of the Code dictates limitations on scattered site properties and the Department is unable to expand on those limitations. No change is proposed.

Board Response: Department's response accepted.

§50.6(d) - Site and Development Restrictions, Credit Amount

Comment: Comment suggests that, with the legislature increasing the maximum credit amount to one group of affiliated entities to $2 million, the exemption for a development consultant from the limitation is not justified. A development consultant should be subject to the same $2 million limitation as other entities. Additional comment suggested that in order to build capacity of developers in rural Texas, the credit cap should be prorated on those developments which have a joint venture in rural areas. Similarly, other comment suggests the complete exception of rural development deals from the $2 million cap, provided that proof of how the experience helps build capacity is provided in the Application.

Department Response: The exemption for consultants allows experienced developer/consultants to aid new groups interested in entering the tax credit program; therefore to apply the cap to consultants would unduly harm new and small developers with limited experience. Staff concurs with the comment that, to build capacity in rural areas, adjusting the $2 million limitation will allow for developers to help increase rural capacity.

"(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 such Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development. 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. In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has less than 76 Units. 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 Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:…"

Board Response: The only alteration to the Department response was that the Board changed "less than 76 units" to "76 Units or less."

"In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has 76 Units or less. 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."

§50.6(f) - Site and Development Restrictions, Limitations on Developments

Comment: Comment suggests that the limitation in funding of two (or more) developments within one linear mile, should have an exception based on the same tests as in §50.5(a)(8)(D) whereby developments proposing rehabilitation or HOPE VI, or which are supported by the local governing body, are exempted from the one-mile rule. Opposition was also voiced to the provision as written because the writer does not believe it meets the intent or letter of SB 264 in that it advocates concentration in suburban and rural settings. Comment also raised concern that the timing of multiple bond deals violates this clause. Comment was received that it was unclear how ties between developments (both 9% and 4%) would be handled throughout the year and how the 3 year mark is determined.

Department Response: The current language is consistent with SB 264 and staff does not have the latitude to alter the legislated language. To ensure clarity in evaluating this section, a reference has been added to how "ties" on timing for this rule, the one mile in the same year rule and the capture rate.

"(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, housing tax credits to more than one Development in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2004 are Harris, Dallas, Tarrant and Bexar Counties). For Tax Exempt Bond Developments, the year of the Development is the calendar year in which the Board approves the housing tax credits for the Development. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(h)."

Board Response: Department's response accepted.

§50.7(a) - Regional Allocation Formula, Set Aside and Redistribution of Credit

Comment: One comment opposed the increased rural allocation. Comment recommended that this section be amended to move the TX-USDA-RHS allocation from a set-aside to an allocation within each region to ensure consistency with SB264. While this is not a substantive change, it makes the plan consistent by renaming the TX-RHS-USDA funding to an "allocation" rather than a set-aside.

Department Response: Regarding the opposition to the rural allocation, the allocation is created in accordance with §2306.111(d) as revised by §9 of SB264. Actual feedback on the calculation of the formula is not handled in this rule. No changes are recommended. Regarding the USDA allocation, in order to ensure compliance with legislation, staff concurs that the TX-USDA-RHS funds should be counted as a regional allocation, as recommended as an addition to §50.7(a) of this title.

"Approximately 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS and that meet the definition of a Rural Development and do not exceed 76 Units if new construction. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside."

Board Response: Department's response accepted.

§50.7(b) - Regional Allocation Formula, Set Aside and Redistribution of Credit

Comment: Comment suggests that a new section be added to require that awards to nonprofits be used to reduce all allocations to which it applies. Additional comment regarding this section opposes the elimination of the elderly set-aside because it will diminish the number of applicants that will submit in the urban/exurban or rural areas due to the fact that points which are

used to obtain an elderly allocation are considerably less than other set-asides.

Department Response: A new section regarding the nonprofit allocation is not necessary- all set-asides overlap and developments are already attributed to all set-asides for which they are eligible. Regarding the comment on an elderly set-aside, the Department believes that population type of the development should be market driven and determined by each applicant based on their site. No changes are suggested.

Board Response: Department's response accepted.

§50.7(b)(1) - Regional Allocation Formula, Set Aside and Redistribution of Credit

Comment: Comment received recommended that this section be revised to reflect that a non-profit organization participating in the non-profit set-aside not be required to receive at least 51% of the developer fee if that nonprofit organization is an instrumentality of the public housing authority.

Department Response: While the Department supports the importance of nonprofit entities receiving a portion of the developer fee, it also feels that this should be dealt with in the partnership agreement. Staff therefore will be deleting the requirement that the nonprofit receive 51% of the developer fee.

"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."

Board Response: The Board made a change to this section from the nonprofit entity needing to be the sole general partner to the nonprofit needing to be the controlling general partner. This was for consistency with other revisions made throughout the document.

"If the organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member."

§50.7(b)(2) - Regional Allocation Formula, Set Aside and Redistribution of Credit

Comment: Comment recommended revising the At-Risk set-aside to insure that preservation funding is being used solely for preserving housing and not new construction on a new site.

Department Response: A clarifying sentence has already been added to the At-Risk Set-Aside definition discussed earlier.

Board Response: Department's response accepted.

§50.9(d)(3) - Evaluation Process, Administrative Deficiencies

Comment: Comment suggests that, while it is understandable that administrative deficiencies need to be corrected quickly, it is burdensome to require the developer to wait up to 2 months for a deficiency letter and then have a very limited turn-around time. It is requested that the Department allow 10 days rather than 5 to correct a deficiency, which will allow a prompt response to any deficiencies while not expecting the developer to wait for the deficiency letter for extended periods.

Department Response: Staff recommends the suggested extension of the deficiency time period up to ten days in an effort to decrease the burden on the Applicant during the application process.

"(3) 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. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within eight business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within ten business days from the deficiency notice date, 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."

Board Response: Department's response accepted.

§50.9(d)(4) - Evaluation Process, Subsequent Evaluation of Prioritized Applications

Comment: Comment recommends a revision to this section to complement the change made from the TX-USDA-RHS set-aside to the TX-USDA-RHS allocation. This is needed to distinguish between the mandated set-asides and the allocations.

Department Response: Staff concurs that the suggested language be implemented, as recommended in §50.7.

"(4) Subsequent Evaluation of Prioritized Applications. After the Application is scored under the Selection Criteria, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. This prioritization order will also be used in making recommendations to the Board. Assignments will be determined by first selecting the Applications with the highest scores in the Nonprofit Set-Aside statewide. Then selection will be made for the Applications with the highest scores in the At-Risk and TX-USDA-RHS Set-Asides within each Uniform State Service Region. Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments, regardless of Set-Aside, in accordance with the requirements under §50.7(a) of this title for a Rural Regional Allocation and Urban/Exurban Regional Allocation. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban/Exurban Regional Allocation. Funds for the Rural Regional Allocation within a region, for which there are no eligible feasible applications, will go to the Urban/Exurban Regional Allocation for that region and will not be shifted to Rural Developments in another region. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §50.6(d) of this title, 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 necessary to ensure that all available housing tax credits are allocated within the period required by law."

Board Response: Department's response accepted.

§50.9(e)(1)- Required Pre-Certification and Acknowledgement Procedures, Experience Certificate

Comment: Comment supports the experience threshold requirement, but requests clarification as to whether the word "residential" refers to both single-family and multifamily residential.

Department Response: Staff recommends clarification that both single and multifamily residential developments qualify as residential.

"(1) Experience Certificate. Upon receipt of the evidence required under this paragraph, a certification from the Department will be provided to the Applicant for inclusion in their 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, the individual must show that the units were successfully developed as required below, 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 $6,000 of direct hard cost per unit."

Board Response: Department's response accepted.

§50.9(e)(2) - Required Pre-Certification and Acknowledgement Procedures, Financial Statement

Comment: Consistent with other comments regarding an open and completely transparent application procedure, it is recommended that any person with an ownership interest in the Applicant submit a financial statement. Since the legislature requires penalties for individuals previously removed from an entity for malfeasance of duties, the Department will necessarily need to know all owners of an Applicant in order to determine previous compliance. Since the person is an owner that will obtain a benefit from the allocation of housing credits, all owners should submit financial statements. The exemption for board members of public housing authorities should not be expanded to include non-profit entities.

Department Response: While Staff recognizes the importance of an open and transparent application cycle, the Department must balance the level of documentation required. The Department wants to be sure it is only gathering information which it truly needs and will evaluate. Ownership interests less than 10% will generally have a very small role in bearing the financial strength behind the development. Therefore, the Department does not feel that financial statements in these instances are necessary. Because the proposed change is not necessary to facilitate an open and transparent cycle, staff recommends no change.

Board Response: Department's response accepted.

§50.9(e)(3) and (4) - Required Pre-Certification and Acknowledgement Procedures, National and Previous Participation

Comment: Comment received recommends that previous participation certificates be obtained from all individuals that have any ownership interest or any ability to control the applicant. By excluding certain individuals from filing previous participation certificates, the Department appears to be making a judgment that either the board members effectively have no control over the nonprofit entity or that the past performance of the board members is insignificant based on the status of the entity. Comment contends that either assumption or judgment is invalid and not justifiable.

Department Response: While Staff recognizes the importance of an open and transparent application cycle, the Department must balance the level of documentation required. The Department wants to be sure it is only gathering information which it truly needs and will evaluate. Ownership interests less than 10% will generally have a small role in the operation bearing the financial strength behind the development. Therefore, the Department does not feel that financial statements or previous participation documentation in these instances are necessary. Because the proposed change is not necessary to facilitate an open and transparent cycle, staff recommends no change.

Board Response: Department's response accepted.

§50.9(f)(4)(A) - Threshold Criteria- Certification on Property Amenities

Comment: Public comment suggests that the developer should be given the option to select certain amenities that are not discriminatory against rural or small properties and which allow the developer to meet the needs of the potential resident of the community. It is recommended that applications for larger developments be required to provide four basic amenities while rural and smaller properties have the option to select two of the six designated amenities. Extensive comment suggests that, in many areas, it is difficult to obtain public telephone, that they are not necessary for elderly developments, and that it is unnecessary to have full perimeter fencing particularly in rural areas. Other comment suggests that this section be eliminated and add payphones, perimeter fencing, community laundry rooms and furnished community room to Section §50.9(g)(7)(D), which addresses Common Amenities. Further comment suggests that all Applications are required to meet a minimum threshold of points, based on development size and Applicants can compete for extra points by providing more common amenities than are required by threshold. Under the QAP, a development could achieve these 6 points to meet threshold by providing a barbecue area (1), two play areas (2), a business/computer center (2), and a service coordinator office (1). Both support and opposition was voiced to the recommendation to increase the Threshold Requirement by 2 points.

Department Response: The Department does not want all amenity options moved to selection criteria as this may disincentivize applications in non-competitive set-asides or regions from doing even basic amenities. However, staff concurs that the Development should be given the option to select certain amenities. However, the Department maintains that pay phones,

full perimeter fencing, and community rooms are amenities to tenants that the Department values. It is increasingly difficult to get pay phones installed, which makes them on par with many of the amenities listed. Therefore, staff does not support the deletion of any of these amenities. However, staff recommends adding language that includes: a business/computer center, and a service coordinator office to the list of threshold amenities. Staff recommends the following change to this section of the QAP.

"(A) A certification of the basic amenities selected for the Development. 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 complete this exhibit. Developments with more than 36 units must provide at least four of the amenities provided in clauses (i) through (viii) of this subparagraph. Developments with 36 Units or less and/or Developments receiving funding from TX-USDA-RHS must provide at least two of the amenities provided in clauses (i) through (viii) of this subparagraph. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) Full perimeter fencing;

(ii) designated playground and equipment;

(iii) community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups);

(iv) a furnished community room;

(v) recreation facilities;

(vi) public telephone(s) available to tenants 24 hours a day;

(vii) a business/ computer center; or

(viii) a service coordinator office.

Board Response: The Board revised this section to streamline it with the amenity component of selection criteria. Therefore, this section will refer only to a threshold requirement to have amenities but will not list the options. The section will refer to the amenity portion of scoring, §50.9(g)(7)(D).

"(A) A certification of the basic amenities selected for the Development. The Applicant must certify that they will satisfy at least the minimum point threshold for amenities as further described in §50.9(g)(7)(D). 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 complete this exhibit. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met."

§50.9(f)(4)(B) - Threshold Criteria- Certification on Unit Amenities

Comment: Comment suggested that the existing subsection (b) be stricken in its entirety and become part of the amenity section of the scoring component of the selection process. Rather than mandate that developments have certain features, the choice of basic amenities should be a developer decision based on the need of the location and the type of housing proposed.

Department Response: Staff agrees that many amenity features should be selected on a case-by-case basis for each application and therefore has a substantial list of items in the selection criteria. However, the Department also believes that some unit amenities are so basic as to warrant their requirement in every tax credit property. Therefore, staff does not recommend any revisions to this section.

Board Response: Department's response accepted.

§50.9(f)(4)(E) - Threshold Criteria- Certification for Minority Owned Businesses

Comment: Comment suggests that judicial actions are increasingly holding that affirmative action and quotas are not enforceable, and this should be taken into consideration in drafting the revisions to the language.

Department Response: This section is written in accordance with §2306.6734, Texas Government Code. Staff can not recommend the removal of this section.

Board Response: Department's response accepted.

§50.9(f)(4)(F) - Threshold Criteria- Certification on Section 504

Comment: Comment supports ensuring that all developments include the visitability standards in the Texas Government Code §2306.514.

Department Response: The Department has ensured that the QAP includes all accessibility requirements of state legislation that apply to multifamily housing. However, §2306.514, Texas Government Code, refers to requirements on single family affordable housing only. To be clear, however, a clarifying sentence has been added to the end of subparagraph (F) regarding any single family development.

"Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code."

Board Response: Department's response accepted.

§50.9(f)(4)(G) - Threshold Criteria- Certification on Energy Saving Devices

Comment: Comment recommends that this existing section be removed from threshold. It is suggested that the Legislature desired that appropriate incentives be authorized for energy savings technology. However, an appropriate incentive is not the equal of mandating energy savings features in every property. To comply with the Legislature, it is best to relocate the energy features to a scoring component to insure that incentives may be given.

Department Response: Because of the substantive revisions required to promulgate this change and the importance of ensuring energy efficiency for all tenants, staff suggests including this as an item for the 2005 QAP working group to discuss.

Board Response: Department's response accepted.

§50.9(f)(4)(I) - Threshold Criteria- Certification on Reserve Accounts

Comment: Comment requests that this section be revised to comply with §13(1) of SB 264, where the Legislature determined that there is no need for the Department to require the replacement reserve account when a development is otherwise required

to maintain a reserve account with Fannie Mae, HUD and USDA. Additional comment received is an amended version of the draft that addresses the reserve requirements for some properties. The amended language corrects two items in the section: (1) it specifically mentions that the reserve requirement is applicable only to properties where the Department is the sole first lien holder and a reserve account is not otherwise required by state or federal law, and (2) it recognizes that properties receiving financing from TX-USDA-RHS are exempt from the reserve requirement due to otherwise being required to maintain a reserve account under federal law.

Department Response: The proposed rule is consistent with §2306.186, Texas Government Code, as added by SB264. No change is recommended.

Board Response: Department's response accepted.

§50.9(f)(5)(iv) - Threshold Criteria - Design Items

Comment: Comment suggests that the language be revised to remove the requirement of having floor plans that reflect accessibility and energy features.

Department Response: No further comment supports this recommendation and there is no substantial reason given for the removal of this item. No change is recommended.

Board Response: Department's response accepted.

§50.9(f)(5)(B) - Threshold Criteria - Certifications, Boundary Survey

Comment: Comment received requests more flexibility in requiring exact location of the development site as described by the metes and bounds legal description. Comment opposes the loss of pre-application points or termination because of a site change. Further comment suggests that a boundary survey should not be required due to cost when a city or county lot map is available.

Department Response: Staff will consider site amendments and their impact on the pre-application points for the 2005 QAP Working Group, but does not recommend any further changes to this section for 2004 without further comment and discussion. No changes are proposed.

Board Response: Department's response accepted.

§50.9(f)(6)(D) - Threshold Criteria - QCT

Comment: Comment voiced concern that the 130% boost for developing in a QCT, in effect, promotes saturation in areas of the state.

Department Response: Although the Department agrees that the policy does encourage growth in QCTs, the 130% boost is legislated in §42 and is therefore a requirement. No change at this time.

Board Response: Department's response accepted.

§50.9(f)(6)(E) - Threshold Criteria - Certifications, Property Conditions Assessment

Comment: Comment suggests that the proposed new requirement of a Property Condition Assessment ("PCA") is extremely troublesome. The PCA requested by the department is quite onerous and of very limited usefulness, and the requirement should be deleted in its entirety. If one is required, then it should be limited to those properties where the Department is the first lien holder. In addition, for TX-USDA-RHS properties, the Housing Quality Standards Checklist prepared by TX-USDA-RHS should be accepted in lieu of the costly PCA.

Department Response: The Department does not agree with the proposed changes as a whole. As applications for rehabilitation developments increase each year, so does the administrative responsibility of ensuring that property conditions for these developments withstand the 30 year affordability period. Staff is requiring this item as a tool for the Department to monitor the conditions of proposed developments. While staff does not recommend the deletion of this item, staff does recommend that the Housing Quality Standards Checklist prepared by TX-USDA-RHS should be accepted in lieu of the PCA. It should be noted that the National Council of State Housing Agencies recommends in its Best Practices that all states require a third party capital needs assessment similar to the PCA required in this rule.

"(E) Rehabilitation Developments must submit a Property Condition Assessment performed in accordance with §1.36, of this title Property Condition Assessment Guidelines. For Developments receiving financing from TX-USDA-RHS, a copy of the Housing Quality Standards Checklist prepared by TX-USDA-RHS may be submitted in lieu of the Property Condition Assessment."

Board Response: Department's response accepted.

§50.9(f)(7)(C)(iii) - Threshold Criteria- Gap Financing Documentation

Comment: Comment recommends that a sentence be added to provide that if the gap financing proposed in the Application fails to materialize, then the application be deemed infeasible and disqualified.

Department Response: Staff recommends no change because this item is merely documentation for threshold and does not tie in any way to points. It is quite possible that a development would have gap financing evidence (non-point related) that does not materialize. If that development were still feasible, it would be inequitable to disqualify them for not having the funds.

Board Response: Department's response accepted.

§50.9(f)(8)(A) - Threshold Criteria - Public Notification

Comment: Comment suggested that with the increased public notice requirements mandated by the legislature, it appears unnecessary to require publication in two newspapers. One commenter supported publication in both newspapers because many suburban readers now choose between the expanded local coverage in the metro daily or their local newspaper. A technical change is also proposed in the language of this section. While rehabilitation developments that are already serving low income households are not "required to provide this Exhibit", the language is silent whether the Notice must still be published. To clarify the intent, the exemption of publishing should be stated.

Department Response: The Department believes that residents of communities often take one of two papers and that to ensure adequate notification, both newspaper requirements should be retained. Staff recommends the language change to clarify intent.

"(A) A copy of the public notice published in the most widely circulated newspaper in the area in which the proposed Development will be located. The newspaper must be intended for the general population and may not be a business newspaper or other specialized publication. Such notice must run at least twice within

a thirty day period. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located within a Metropolitan Statistical Area the notice must be published in the newspapers of both the Development community and the Metropolitan Statistical Area. Developments that involve rehabilitation and which are already serving low income residents are not required to publish this Notice or provide this exhibit."

Board Response: The Board revised this section to indicate that in communities within an MSA if the local paper is published at least five times a week, the notification only needs to be placed in the local newspaper.

"In communities located within a Metropolitan Statistical Area the notice must be published in the newspapers of both the Development community and the Metropolitan Statistical Area, unless the local newspaper of the Development community is published at least five times a week in which case the notice need only be published in the local newspaper of the Development community."

§50.9)(f)(8)(B)(ii)(I) -Threshold Criteria - Public Notification

Comment: Comment suggests that notice to neighborhood organizations based on information from city and county clerks will not be workable and suggests that applicants inquire of "knowledgeable individuals within the community", such as school staff, PTA and civic organizations to identify neighborhood organizations (25). Change is suggested to require a developer to notify only those groups on record that would be deemed to be a neighborhood association serving the area or an organization that could be considered to play a role in housing and/or supportive services for the community. Additionally, it is recommended that TDHCA take a more proactive approach to fulfilling this requirement. A statewide database/registry of housing-related or neighborhood organizations would be far more efficient than 200 applicants scrambling to contact city and county clerks who often have no idea what the applicants are talking about. Comment also recommends staff confirm with state legislators that no representative organization has been overlooked. One commenter challenged the view that the notice requirement is a difficult and arduous undertaking and supported the requirements. Another comment requested adding a boundary for the distance in which neighborhood organization's should be notified, at least for larger cities.

Department Response: The Department encourages applicants to use any reasonable means to identify neighborhood organizations and to engage groups in constructive dialog. §2306.6704, Texas Government Code, however, requires notice to neighborhood organizations "on record with the state or county…and whose boundaries contain the proposed development site". Implementation and enforcement of this provision requires a specific, verifiable process. The Department has determined that, while imperfect, the best source of information on neighborhood organizations "on record with the state or county" is the city and county clerks. The Department has researched possible state records for this information and not found a workable source. No change is recommended. The Department will research the feasibility of a statewide database/registry, as well as the concept of a boundary, for 2005.

Board Response: Based on concerns of how extensive the lists from the clerks may be, and the public wanting direction on how to narrow down their notifications, new language was added to clarify who from the list is required to receive notification.

"(I) City and County Clerks and Neighborhood Organizations. Evidence must be provided that a letter requesting information on neighborhood organizations and meeting the requirements of "Clerk Notification" as outlined in the Application was sent no later than January 15, 2004 to the city clerk and county clerk for the city and county where the Development is proposed to be located. A copy of the reply letter from the city and county clerks must be provided. For urban/exurban areas, all entities identified in the letters from the city and county clerks whose listed address has the same zip code as the zip code for the Development must be provided with written notification, and evidence of that notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters from the city and county clerks with those adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters from the city and county clerks whose listed address is within a half mile of the Development site must be provided with written notification, and evidence of that notification must be provided. If the Applicant can provide evidence that the proposed Development is not located within the boundaries of an entity on a list from the clerk(s), then such evidence in lieu of notification may be acceptable. If no reply letter is received from the city or county clerk by February 25, 2004, then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any 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, the Applicant must notify those organizations. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located, the Applicant must attest to that fact."

§50.9(f)(8)(B)(ii)(IV-VII) - Threshold Criteria- Public Notification

Comment: Comment received suggested that notification to city and county governments should be consolidated so that a single letter to the City Council or a single letter to the County Commission would suffice to meet this requirement. Alternatively, a letter should be sent to each of the elected officials within the jurisdiction and only a single letter to the other body. It was also recommended by one commenter that a developer should be required to host a town hall meeting in a city for each application submitted.

Department Response: §2306.6705, Texas Government Code, is explicit in its requirement that applicants notify all elected members of the city and county. While staff does not recommend a town hall meeting as a requirement, it should be noted that the QAP does include points for having a public meeting with the community. No changes are recommended.

Board Response: Department's response accepted.

§50.9(f)(8)(C) - Threshold Criteria - Public Notification

Comment: Significant comment suggests that the requirement for signage should be removed. With the other notice requirements, it is unnecessary to require a large sign on a property that is generally not owned by the applicant. According to the commenter, considering that the Legislature mandated increased notice of various types and to different entities, it is reasonable to assume that the Legislature did not believe a large sign was necessary, or even advisable, for adequate public notice. Since the Legislature did not deem it necessary, there is no reason for the

Department to adopt mandatory site sign requirements. There is already more than sufficient notification requirements within the QAP and points awarded for a developer initiated forum. Other comment suggests that sign size be reduced to 3'x5'. Comment suggests that, while it is recommended that this provision is removed, if staff keeps the language, it needs further clarification. During this first-year trial period, the "default" notification range should be 250 feet, not 1,000 feet- since taken from each boundary, this is still a wide notification area. Also, it needs to be clear that the sign is located on the property itself and it may be in some instances that it cannot be placed within 20 feet of the main road facing the site. Additional comment requests that the Department consider taking out the mailing of public notifications because it is difficult for TDHCA to verify and monitor and because signage is the best method of notifying the community about a development. Further comment suggests that Housing Finance Corporations already provide sufficient notice to achieve the intent of this section, and should therefore be exempt from this section if the applicant is seeking the approval of 4% credits and the local housing finance corporation is issuing the associated private activity bonds, or the language be entirely deleted.

Department Response: Comment both supports and opposes the rules requiring notification by sign on the proposed development site or a mailing to adjacent property owners. The Department believes that signage and mailings ensure broad notice to interested persons and organizations near the site. Broad public notice is supported by the notice requirements of SB264 and strong input from the Department's Public Input Working Group. Signage or mailing also serves to remedy difficulties of mailing notices to neighborhood organizations caused by a lack of quality records on neighborhood organizations at the state, county or city. Comment also suggests a 250 foot area for mailings. The Department disagrees. 250 feet from a development site may extend barely across adjacent roads and reaches too few adjacent properties. Staff does not recommend the deletion of the section or exemption for applicants applying for Bonds and 4% credits because of the importance of notice.

Board Response: Department's response accepted.

§50.9(f)(8)(E) - Threshold Criteria - Public Notification

Comment: Comment suggests that the requirement of providing proof of sending a letter to a Public Housing Authority is unnecessary and should be deleted. Having the developer certify that it will consider as potential tenants holders of Section 8 vouchers or certificates or other tenant based rental assistance programs is more appropriate.

Department Response: Staff concurs with the comment and suggests language that will allow for a certification in lieu of proof of notice.

"(E)The Development Owner shall certify to the Department that it shall consider as potential tenants holders of Section 8 vouchers or certificates or other tenant based rental assistance programs."

Board Response: Department's response accepted.

§50.9(f)(10) - Threshold Criteria - Income and Operating Expenses

Comment: Comment suggests that the 30 year pro form should be changed to an eighteen year pro forma. According to the commenter, eighteen years is the original compliance period and a thirty year pro forma is not of value.

Department Response: Staff does not recommend any changes to the current language because the affordability period of 30 years is reflected in the requirement.

Board Response: Department's response accepted.

§50.9(f)(11)(B)(v) - Threshold Criteria - Nonprofit GP and Developments

Comment: Comment recommends that this section be revised to reflect that a nonprofit organization participating in the nonprofit set-aside is not required to receive at least 51% of the developer fee if that nonprofit organization is an instrumentality of the public housing authority.

Department Response: As noted earlier, staff concurs and the 51% requirement is being removed.

"(v) a certification 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."

Board Response: Department's response accepted.

§50.9(g) - Selection Criteria - In General

Comment: Comment suggests that the draft version of the selection criteria does not comply with the scoring criteria mandated by Chapter 2306 of the Texas Government Code, especially the revisions contained in Section 22 of Senate Bill 264. It is asserted that the scoring component must also comply with the various provisions of Chapter 2306 of the Texas Government Code that requires scoring preferences, priorities or incentives to various specific activities. Based on the language of 2306.6710(b), as amended by Section 22 of SB 264, the scoring feature of the selection plan should rank, in descending order of priority, the nine items mentioned with any other scoring preferences or priorities mentioned in Chapter 2306 having points no higher than the lower items in the designated scoring priorities of 2306.6710(b). Selection criteria was provided that, according to comment, complies with the legislative requirements.

Department Response: The Department disagrees. Chapter 2306, Texas Government Code, as well as §42 of the Code, direct the Department to score a number of criteria other than the nine located in 2306.6710. §2306.6710 does not state that all other criteria must be scored below the nine listed in §2306.6710. The Department seeks to fulfill the purposes of 2306 and §42, and to harmonize the statutory language from all sources. The Department's application of the law also is more reasonable. For instance, consideration and scoring for the housing needs of a location (§42) would generally be viewed as a more important criteria, and should be scored higher, than the detail of services provided to tenants (§2306.6710, social events, community garden, etc.). The commenter also violates their own recommendation by scoring several other criteria above the lower of the nine criterion in §2306.6710.

Board Response: Department's response accepted.

§50.9(g)(1) - Selection Criteria - Financial Feasibility

Comment: Comment suggests using 50 points as the maximum allowable points for financial feasibility. The recommended revision also insures that the financial pro forma is submitted by an entity that is in the business of making real estate loans. Comment suggests that the language be modified to specifically state that the TX-USDA-RHS Source and Uses Comprehensive Evaluation meet the requirement for submitting a pro forma from a

real estate entity. As part of financial feasibility, the issue of deferred developer fees was addressed requiring a deduction of 10 points for a deferral of greater than 50% of the developer's fees. Other comment reminds the Department of the importance of financial feasibility and suggest that it be kept as the top priority of the Department.

Department Response: The Department, through the original number of points recommended, has already made financial feasibility the highest priority. The Department does not recommend the 50 point maximum. The 10 point deduction for a deferral of greater than 50% of the developer's fees is not legislated as part of financial feasibility. Staff does recommend that the current language be modified to specifically state that the TX-USDA-RHS Source and Uses Comprehensive Evaluation meet the requirement for submitting a pro forma from a real estate entity.

"(1) Development Financial Feasibility. Applications will receive points based on the supporting financial data provided behind this exhibit in addition to the commitment letter required under subsection (f)(7)(C) of this section. The supporting financial data shall include a thirty year pro forma prepared by the permanent or construction lender specifically identifying each of the first ten years and every fifth year thereafter. The commitment letter must include the anticipated total operating expenses, net operating income and debt service for the first year of stabilized operation as reflected in the pro forma. The pro forma must indicate, and the commitment letter must confirm, that the development pro forma maintains a 1.10 debt coverage ratio throughout the initial thirty years proposed. In addition, the commitment letter must state that the lenders assessment finds that the Development will be feasible for thirty years. Points will be awarded if these criteria are met. No partial points will be awarded. For developments receiving financing from TX-USDA-RHS, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" shall meet the requirements of this section. (28 points)."

Board Response: Department's response accepted.

§50.9(g)(2) - Selection Criteria- Quantifiable Community

Comment: Comments suggest that the scoring for community support proposed by the Department does not comply with the language of SB 264 or its intent in that the Department's proposal allows for 12 points for Quantifiable Community Participation (QCP) but 18 for amenities and 25 for transitional housing. Other comment suggests that the language is hostile, threatening, and appears to be intentionally designed to "scare off" neighborhood organizations from providing input. It was noted that no where else in the QAP other than the "community participation" heading is there a provision where a person or entity is specifically threatened with legal action for misrepresentation or false statements. Other comment recommends that the Department consider this section as the second priority in point scoring, as required by SB 264.

Department Response: Comment interprets the rule to score only 12 points for QCP and states that this is incorrectly lower than 18 points for amenities and suggests a scoring system with two tiers of positive points and a zero point level. The rule proposes a 24 point score for QCP, from +12 to -12. Relative to other point items, this 24 possible point differential properly ranks above the 18 points for amenities. The use of positive and negative points for community support and opposition will be more understandable because it is more intuitive that opposition will yield negative points rather than fewer positive points.

Board Response: Department's response accepted.

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

Comment: Comment suggest that the Applicant be permitted to include letters in the Application and receive points for these and not be at the mercy of a slow mail system.

Department Response: The Department will accept letters with the Application or separately via mail. Change to the language to include the acceptance of letters at Application is recommended to facilitate the receipt of letters that are available at the time of Application. By way of administrative clarification, staff also recommends change to clarify that letters will be provided for the Board's consideration and to clarify when information should be provided for Board consideration.

"(A) Receipt of Input. Letters must be received by the Department no later than April 30, 2004, and only, for scoring purposes, directly from neighborhood organizations or with the Application. Letters must be addressed to the Texas Department of Housing and Community Affairs, "Attention: Director of Multifamily Finance Production Division (Neighborhood Input)". Letters received after April 30, 2004 will be summarized and provided for the Board's information and consideration, but will not affect the score for the Application. Separate from scoring, the Department urges all persons and organizations that wish to provide input to the Department to do so well before (and, preferably earlier than ten days before) the day of a Board meeting when a final decision must be made so the input may be carefully considered. Board decisions often cannot be delayed and late input is difficult for the Board and Department to fully consider."

Board Response: Department's response accepted.

§50.9(g)(2)(B) - Selection Criteria - Quantifiable Community Participation

Comment: Comment recommends that the definition of neighborhood organization include the requirement that the organization must be on record with the county or state as of December 31 of the year before the application is submitted. The purpose of this change is to allow a specific date when the developer needs to check the records for a listing of community organization.

Department Response: Staff concurs that a specific date is of use for the neighborhood organization's eligibility, but established a date of the Application Submission Due Date of March 1st instead of the recommended date of December 31, 2003. This ensures that interested neighborhood groups have time after the pre-application to get themselves organized.

"(B) Neighborhood Organizations. For the purposes of the scoring of this exhibit, neighborhood organizations are organizations that are on record with the county or state in which the development is proposed to be located as of March 1 of the application year and that have a primary purpose of working to affect matters related to the welfare of the neighborhood that contains the proposed development site, not including governmental entities."

Board Response: Department's response accepted.

§50.9(g)(2)(C)- Selection Criteria- Scoring and Evaluation of Input

Comment: Comment states that having the Executive Award Review and Advisory Committee (EARAC) determine the score of neighborhood organization letters is too subjective. Other comment opposes scoring the content of the letters and states that a

letter of opposition suggests the developer has not successfully addressed neighborhood concerns and that the process of developer-neighborhood exchange failed, and that is as important as the "reasons why". Other comment expresses concern that input letters include "specific evidence.".

Department Response: §2306.6710 requires the Department to score and rank applications using a point system that prioritizes criteria on quantifiable community participation based on written statements from neighborhood organizations. The word, "quantifiable", as well as a fair and reasoned application of the statutory language, requires the Department measure or weigh the merits of the content of the letters. Clearly, no weight should be given to input that evidences unlawful discrimination, no reason for the position asserted, or false or inaccurate reasons for the position taken. The unknown content of letters at this time and its likely variability also preclude a more detailed rule on how to score the content of the letters. That is why careful consideration and scoring of input letters by the Department's top managers on EARAC is proposed. EARAC's scoring of letters will permit the Department to carefully consider each letter and the merits expressed, and to consistently score the merits of each letter.

Board Response: Department's response accepted.

§50.9(g)(2)(C)(i) - Selection Criteria- Scoring and Evaluation of Input

Comment: Comment suggests that to provide parity to areas where no neighborhood organizations exist (possible rural areas) and to arguably assist in deconcentration, applications in areas where there are no neighborhood organizations on record should receive maximum points. Comment also suggests that applicants provide written verification by the presiding officer of local government or "his certified representative" that there are "no known chartered organizations on record". Other comment would delete §50.9(g)(2)(C)(i) which provides that an application from an area from which no neighborhood organization letters are received and which has no neighborhood organizations on record will receive the higher of zero points or the average points received by all applications for this exhibit. Instead, comment suggest a clause that attempts to minimize the scoring impact of an area that may not have any neighborhood organizations.

Department Response: The Department disagrees with the comments and believes that zero or average points provides the fairer parity treatment for applications from areas from which no neighborhood organization letters are received, rather than giving them the maximum points. If maximum points were automatically given to applications from areas with no neighborhood organizations, those applications would receive an unfair advantage. Regarding the proposal for written verification by the presiding officer of local government or "his certified representative" that there are "no known chartered organizations on record", the Department believes this suggestion is cumbersome and insufficiently adds to the required certification from the applicant, the lack of the letters received, and information requested from city and county clerks, to justify the additional burden.

Board Response: Department's response accepted.

§50.9(g)(2)(C)(ii) - Selection Criteria - Scoring and Evaluation of Input

Comment: Comment suggest that the maximum score assigned to community participation does not reflect the legislative intent of Section 22 of SB 264 and that the intent of SB 264 was to give "quantifiable community participation" a weight of about 25%, second only to the financial feasibility of the development, which was to receive a weight of 30%.

Department Response: While the Department agrees that §2306.6710(b) requires that nine criteria be ranked in descending order, the legislation does not assign any number of points or proportion of points to any of the nine criteria. No changes recommended.

Board Response: Department's response accepted.

§50.9(g)(2)(D) - Selection Criteria - Scoring and Evaluation of Input

Comment: Comment supports that letters that are discriminatory against persons protected by the Fair Housing Act should be disqualified. It is also encouraged that the Board add a provision that disqualifies any letter written by a person or entity that is being compensated by a member of the development team or related party. Comment requests that the template that TDHCA provides of the notice includes this provision informing the potential parties providing input on the application of the need for their comments to be "proper" and not violate fair housing laws.

Department Response: The scoring of letters will be determined on a case-by-case basis and each letter will be reviewed under the rule as currently written.

Board Response: Department's response accepted.

§50.9(g)(3)- Selection Criteria- Development Location Characteristics

Comment: Comment recommends revision to the draft that allows for 5 points if the development is located in any of the areas in subsection (A) through (D) with an additional five points if it is located in a census tract with no other tax credit developments. Subsections (A) through (D) are revised based on the requirement of section 2306.127 to give a priority for certain developments located in certain areas. Subsection E is revised based on §2306.6725(b)(2) that requires an appropriate incentive for a development in a census tract with no other developments receiving tax credits. It is suggested that the Department delete the draft QAP's inclusion of points for a development located in a census tract with a median income higher than that of the county.

Department Response: Staff believes that the points, as originally drafted, adequately support location characteristics that promote the Department's goals and follow legislation.

Board Response: Department's response accepted.

§50.9(g)(3)(D) - Selection Criteria- Development Location Characteristics

Comment: Comment requested clarification on what the term "median income" is referring to. Additionally, clarification on how to pick between the county, MSA or PMSA in which the Census Tract is located. Comment also provided language for clarification.

Department Response: Staff concurs that clarification was merited and suggests that the census tract numbers be adjusted by a factor that corresponds to the change in HUD's county MFI estimates over the time period that has elapsed since the census number was published. It is also suggested that the MSA/PMSA reference be removed as the MSA/PMSA data applies to each of the counties in the MSA.

"(D) 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 MFI for the county in which the census tract is located, as established by HUD. This comparison shall be made using the most recent data available from both sources as of as of October 1 of the year preceding the applicable program year. In those years when the U.S. Census does not publish median family income information at the census tract level, the most recent U.S. Census MFI available for the tract shall be multiplied by the change between HUD's published data for the county MFI as of the year in which the Census MFI was published and the county MFI as of October 1 of 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."

Board Response: Department's response accepted.

§50.9(g)(3)(E)- Selection Criteria- Development Location Characteristics

Comment: Comment suggests that the location characteristic of "a census tract in which there are no other existing developments" is too narrow. We agree that developments should be encouraged in locations where there are no concentration issues. However, we feel that a two-mile radius should be the standard for evaluating concentration, rather than the boundaries of a census tract. Comment also questioned if this section applies to Tax Exempt Bond Developments. Comment stated: The draft QAP's including points for a development located in a census tract with a median income higher than that of the county should be deleted. If points were given for such a location, then the Legislative mandated preferences and priorities of the section noted above would be effectively nullified.

Department Response: SB 264 specifies that this analysis is to be done at the tract level. Therefore, staff cannot recommend the suggestion made in comment. Because the tax credit applications for developments that have Tax Exempt Bond developments are not scored, this section does not apply. Staff disagrees that points for a development in a census tract with a higher median income nullifies legislative priorities. On the contrary, it supports the Department's goals of dispersion, deconcentration, and furthering fair housing. No change is recommended at this time.

Board Response: Department's response accepted.

§50.9(g)(3)(G)- Selection Criteria- Development Location Characteristics

Comment: Comment requests that "Incorporated city" be substituted for "community" in the first sentence to provide greater clarification.

Department Response: Department staff concurs with the recommendation and recommends the following change:

"(G) the Development is located in an incorporated city that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by the United States Bureau of the Census as of October 1 of the year preceding the applicable program year. The Development can not exceed 100 Units to qualify for these points. (10 points)"

Board Response: Department's response accepted.

§50.9(g)(4)(A)- Selection Criteria- Site Location Characteristics

Comment: Comment requests that transportation be listed an item in (i) through (xii) as a choice (5).

Department Response: Transportation to the different amenities is already addressed in the introductory text of this item.

Board Response: Department's response accepted.

§50.9(g)(4)(B) - Selection Criteria - Site Location Characteristics

Comment: Comment points to the difficulty of determining the slope of the site and whether or not it exceeds 15% in any location. For negative amenities, questions were asked about how case by case issues would be handled. Additionally, comment questioned why only Interstate highways are considered a nuisance and not state highways? Clarification was requested to define "heavy industrial use" and "high voltage transmission power line" .

Department Response: Staff concurs that the slope percentage would be difficult to monitor. Staff recommends this section be deleted. For negative amenities, issues will be handled on a case-by-case basis.

"(vii) Developments where the overall existing slope of site in any location exceeds 15% will have 1 point deducted from their score."

Board Response: Department's response accepted.

§50.9(g)(6)(B) - Selection Criteria - Support and Consistency with Local Planning

Comment: Comment states that public meetings should be encouraged, but they should not be cost prohibitive and that having a transcript of the meeting requires the expense of having a court reporter present. Further comment requests the deletion of the section because the meetings, in effect, damage the development of housing rather than build community support. Comment also strongly supports the use of neighborhood meetings between the developer, TDHCA, and neighborhood organizations to educate the local community about need for affordable housing, and to address the community's concerns.

Department Response: In an effort to ensure transparency in the application process, it is necessary to document this scoring item. Because these are open meetings and there is no formal process for minutes, the Department believes that the transcript is necessary. However, it should be noted that the QAP does not require that the transcript be provided by a court reporter. Therefore, no change is recommended.

Board Response: Department's response accepted.

§50.9(g)(6)(C) - Selection Criteria - Support and Consistency with Local Planning

Comment: Comments states that TDHCA should reinstate the provision of the 2003 QAP which provides points for letters from the Mayor, County Judge, City Council Member or County Commissioner indicating support or a resolution from the local governing entity indicating support of the Development. Comment also requests that a template written by TDHCA be provided in the Application for this letter and that it provide the provision informing the potential parties providing input on the application of the need for their comments to be "proper" and not violate fair housing laws. Lastly, comment suggests that the points from state elected officials should be consistent with §2306.6710(b)(1)(F) and 2306.6710(f) and the state officials should be from where the development is located, as written.

Department Response: Following the language and intent of §2306.6710, staff cannot recommend that the letters from the Mayor, County Judge, City Council Member or County Commissioner be counted as a point item in this section. Additionally, staff does not recommend that a template be provided for this letter because the Department prefers to grant each applicant flexibility in wording the notification. Points for this item are consistent with all legislation.

Board Response: The Board added points into the QAP (positive and negative points) for letters of support or opposition from mayors, city council members, judges and county commissioners. The Board also directed the Department to seek an opinion from the State Attorney General on this issue.

"(C) Community Support from Elected Officials. Points will be awarded based on the written statements of support or opposition from local and state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support or opposition of the specific Development at the proposed location. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official no later than May 31, 2004. Letters received after May 31, 2004 will be summarized for the Board in the board summary provided by staff, but will not affect the score of the Application. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Points can be awarded for letters of support or opposition as identified in clauses (i) through (iii) of this subparagraph, not to exceed a total of 12 points. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. The Governing Board has directed the Department to request an opinion from the Attorney General on whether recent legislation permits scoring for input from officials other than state officials. If the Attorney General renders an opinion that only input from state officials may be scored, then city and county input will not be scored."

(i) from State of Texas Representative or Senator (support letters are 3 points each, maximum of 6 points; opposition letters are -3 points each, maximum of -6 points); and

(ii) from the Mayor, City Council member for the area, or a resolution from the City Council (support letters or resolutions are 3 points each, maximum of 3 points; opposition letters or resolutions are -3 points each, maximum of -3 points)

(iii) from the County Judge, County Commissioner for the area, or a resolution from the County Commission (support letters or resolutions are 3 points each, maximum of 3 points; opposition letters or resolutions are -3 points each, maximum of -3 points)"

§50.9(g)(6)(D) - Selection Criteria - Support and Consistency with Local Planning

Comment: Comment suggests that there be notification provisions to individuals and organizations who might need or want to live in housing or who would otherwise support development of housing. Comment recommends that points be awarded to advocacy organizations, social service agencies, civil rights organizations, tenant organizations, as well as others who may have an interest in securing the development of affordable housing.

Department Response: The Department concurs that notifying these entities would be beneficial. However, the Department will be adding this item to §50.11.

Board Response: Department's response accepted.

§50.9(g)(7)(B) - Selection Criteria - Development Characteristics - Cost Per Square Foot

Comment: It is recommended that if the total development cost does not exceed 95% of the average per square foot cost of developments in the Service Region based on prior cost certifications as adjusted for inflation, then the development would be entitled to 8 points. If the costs, based on the same standards are less than 100%, but greater than 95%, then the development would be entitled to 2 points. Comment also states that the provision is not equitable to senior or transitional housing because of additional costs characteristic of housing elderly and transitional populations such as elevators, corridors, stairwells, clubhouses, common space for supportive services. It is recommended that the base limit be increased from $60 to $62. A separate base be established for senior housing in recognition of the added costs Since in its bond underwriting, TDHCA has a range for senior housing that is 17.3% higher than garden style apartments, we recommend that this adjustment be extended to the 9% program. This would take the senior base to $73. This same base should be considered for Single Family housing as well. The use of Net Rentable Area as the denominator in calculating cost per square foot rather than Gross Square footage unfairly penalizes developers who put more common amenities into their developments. TAAHP recommends that the accurate approach to determining cost per square foot is to use Gross Square Footage as the denominator rather than the Net Rentable.

Department Response: Staff concurs with the recommendation to increase the base limit to $62 and the senior base to $73. Staff does not agree with use of Net Rentable Area as the denominator in calculating cost per square foot rather than Gross Square footage because at the Application stage, it is difficult to verify without detailed building plans.

"(B) Cost per Square Foot. For this exhibit, hard costs shall be defined as construction costs, including site work, 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 hard costs per square foot of net rentable area (NRA). The calculations will be based on the hard cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments do not exceed $73 per square foot for Qualified Elderly and Transitional Developments, and $62 for all other Developments $60 per square foot. (9 points)."

Board Response: Department's response accepted.

§50.9(g)(7)(C)(i-ii) - Selection Criteria - Development Characteristics- Amenities

Comment: It is recommended that a maximum of 25 points be available for providing the developer a list of amenities to select from in order to achieve up to the maximum points allowable. Comment recommends moving the threshold items for full perimeter fencing, public telephones, community laundry room and/or laundry hookups and furnished community room to this section for points. Comment also states that the current list of amenities has the effect of encouraging applicants to include

amenities that are unjustified by market requirements. Comment: Senior Communities have expensive covered breezeways that should be included in the amenities.

Department Response: Staff does not concur with the recommendation to change the point value of these amenities because they represent the recommendations of the 2004 QAP working group and are within the legislated requirements for points. Staff suggests that other revisions to this item be revisited by the 2005 QAP working group.

Board Response: Department's response accepted.

§50.9(g)(7)(C)(xvii) - Selection Criteria - Development Characteristics- Amenities

Comment: Comment suggests the need for points for evaporative coolers in dry climates. Additional comment strongly suggests that, according to 2 HVAC companies/ engineers, 13 and 14 SEER A/C's evaporative coil operates warmer than a 12 and causes costly problems. It is recommended that points are not offered.

Department Response: Delete "14 SEER" and add "12 SEER HVAC or evaporative coolers in dry climates.

"(xvii) 12 SEER HVAC or evaporative coolers in dry climates(3 points);"

Board Response: Department's response accepted.

§50.9(g)(7)(D) - Selection Criteria- Amenities

Comment: No public comment received.

Department Response: No alteration proposed.

Board Response: The Board streamlined the amenities listed in the threshold section of the QAP, §50.9(f)(4)(A), into this section. Therefore, this section was revised as noted below.

"(D) Common Amenities. All Developments, must meet at least the minimum threshold of points to satisfy the Threshold requirement under §50.9(f)(4)(A). To receive additional points for this exhibit, Developments must first provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (iii) of this subparagraph and made available for the benefit of all tenants. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to complete this exhibit."

"(iii) Amenities for selection include those items listed in subclauses (I) through (XXIII) 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 §50.9(f)(4)(D) of this title. 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 with controlled gate access (3 points)

(II) Gazebo w/sitting area (1 point)

(III) Accessible walking path (1 point)

(IV) Community gardens (1 point)

(V) Community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups (1 point);

(VI) Public telephone(s) available to tenants 24 hours a day (2 points);

(VII) A service coordinator office (1 point);

(VIII) Barbecue grills and picnic tables- at least one for every 50 Units (1 point)

(IX) Covered pavilion w/barbecue grills and tables (2 points)

(X) Swimming pool (3 points)

(XI) Furnished fitness center (2 points)

(XII) Equipped Business Center (computer and fax machine) (2 points)

(XIII) Game/TV/Community room (1 point)

(XIV) Library (separate from the community room) (1 point)

(XV) Enclosed sun porch or covered community porch/patio (2 points)

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

(XVII) Senior Activity Room (Arts and Crafts, Health Screening, etc.)- Only Qualified Elderly Developments Eligible (2 points)

(XVIII) Secured Entry (elevator buildings only) - (1 point)

(XIX) Horseshoe or Shuffleboard Court- Only Qualified Elderly Developments Eligible (1 point)

(XX) Community Dining Room w/full or warming kitchen - Only Qualified Elderly Developments Eligible (3 points)

(XXI) Two Children's Playgrounds Equipped for 5 to 12 year olds, two Tot Lots, or one of each - Only Family Developments Eligible (2 points)

(XXII) Sport Court (Tennis, Basketball or Volleyball) - Only Family Developments Eligible (2 points)

(XXIII) Furnished and staffed Children's Activity Center - Only Family Developments Eligible (3 points)"

§50.9(g)(7)(D)(iiii) - Selection Criteria - Development Characteristics

Comment: Comment supports accessible walkways throughout the development to ensure that people with mobility impairments may access all parts of the complex.

Department Response: The Department recognizes the need for accessibility and will continue to enforce all legislated requirements surrounding the issue.

Board Response: Department's response accepted.

§50.9(g)(8) - Selection Criteria - Sponsor Characteristics- Experience

Comment: Comment request the elimination of points proposed for developers because they have received tax credits in prior years. To penalize new entrants into the tax credit allocation process by awarding points to those developers who have already been successful seems to reject the Department's desire to enable capacity building. Other comment suggests that a maximum of 5 points be allowed for applicants with experience. Other comment states that since it is common to have delays in

the issuance of 8609s of six to nine months following completion, the documentation to meet this requirement should be either a Certificate of Occupancy (or equivalency) or an affidavit from the Developer affirming that the development completed construction and that 8609s are in process. Other comment suggests that General Contractor be added to the language.

Extensive comment also requests the reinstatement of the three (3) points for HUB participation under §49.9(F)(5)(A) of the 2003 QAP. Comment support the points because it opens the door for qualified minorities to participate in a meaningful way in the program and will train other interested parties as a mentoring process.

Department Response: Due to the strong public opposition to this section and Department concern that individuals will be unduly excluded, staff recommends the deletion. Therefore, no other comments will be implemented. Based on public support and the Department's support of minority enterprise, staff recommends the reinstatement of three points for HUB participation. Staff recommends the same language as was used in the 2003 QAP.

(8) Sponsor Characteristics. Evidence that a HUB, as certified by the Texas Building and Procurement Commission, has an ownership interest in 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 Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period. Evidence will need to be supplemented, either at the time the Application is submitted or at the time a HUB certification renewal is received by the Applicant, confirming that the certification is valid through July 31, 2004 and renewable after that date.

Board Response: The Department had inadvertently left off the number of points to be given for this item in the QAP. Consistent with the 2003 QAP, 3 points will be granted and therefore this correction was made by the Board.

"(8) Sponsor Characteristics. Evidence that a HUB, as certified by the Texas Building and Procurement Commission, has an ownership interest in 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 Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period. Evidence will need to be supplemented, either at the time the Application is submitted or at the time a HUB certification renewal is received by the Applicant, confirming that the certification is valid through July 31, 2004 and renewable after that date. (3 points)"

§50.9(g)(9) - Selection Criteria - Developments Targeting Tenant Populations with Children

Comment: Comment requests that a maximum of 5 points be awarded to properties that will have a 50% or more of total units in the development have 2 or more bedrooms. Other comment points to the fact that the "35% or more" test for 3 bedroom units as currently written in §50.3(47)(G) conflicts with the unit description which only allows up to 30% 3 Bedroom units, as currently written. Additionally, since 4 bedrooms are allowed for Single Family, then this needs to read, "three of more" bedrooms.

Department Response: Staff concurs that the reference to four bedroom units in single family designed homes is necessary.

"(96) Developments Targeting Tenant Populations of Individuals with Children. The Rent Schedule of the Application must show that 3550% or more of the Units in the Development have more than 2 bedrooms (1 point)."

Board Response: The Board, under another item limited 3 bedroom units to no more than 35% of the Units. Therefore, to ensure that points can still be attained for this item, the percentage was adjusted to 30%.

"(96) Developments Targeting Tenant Populations of Individuals with Children. The Rent Schedule of the Application must show that 3050% or more of the Units in the Development have more than 2 bedrooms (1 point)."

§50.9(g)(10) - Selection Criteria - Development Provides Supportive Services to Tenants

Comment: Comment suggests modification of the current point structure so that 3 points are awarded for this item and require that the services be provided at no cost to the household.

Department Response: While the Department does not support the point adjustment, staff does concur that clarification is needed that supportive services can not be charged to the household.

"(B) 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 subparagraph. 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 6 points)."

Board Response: Department's response accepted.

§50.9(g)(11)(F)(ii) - Selection Criteria - Tenant Characteristics

Comment: One commenter indicated that transitional points are not feasible for the elderly developments because it is not realistic to have a transitional elderly development. Comment also suggest that this section be taken out entirely because the legislature did not prioritize transitional housing. Instead of this section, comment recommends 3 points for both elderly and senior populations.

Department Response: Staff values transitional housing for the homeless and will continue to provide incentives for its construction when possible in policy. This is consistent with §42 and Ch. 2306. However, the maximum points are being reduced to 22 points.

"(F) Points will be awarded as follows:

(i) If all Units in the Development are designed solely for transitional housing for homeless persons, 22 points will be awarded; or

(ii) If at least 25% of the Units in the Development are designed for transitional housing for homeless persons, 15 points will be awarded."

Board Response: Department's response accepted.

§50.9(g)(11) - Preservation of existing low income housing

Comment: The Draft QAP does not address points for preserving existing affordable housing. However, Section 2306.008(b)(2) requires the "prioritizing available funding and financing resources for affordable housing preservation

activities." Thus, five points should be allowed if the application involves preserving existing affordable housing. The At Risk Set-aside is restricted to basically troubled properties while 2306.008.(b)(2) speaks to "affordable housing".

Department Response: The Department amply meets the requirements of 2306.008 which requires prioritizing funds for preservation. The At-Risk Set-Aside is designed specifically to preserve housing at risk of losing its affordability. Additionally, the Department utilizes its HOME funds for preservation activities and also has a Jr. Lien Housing Preservation Incentives Program. No changes are recommended.

Board Response: Department's response accepted.

§50.9(g)(12)(A) and (B)- Selection Criteria - Low Income Targeting

Comment: Comment indicated that clarification is needed in the QAP language to indicate if 30% AMGI Units are included in the total number of low income targeted units. Comment also indicated that the graph and the corresponding points to Low Income Targeting should be clearer in the handling of 30% units. It is proposed that the second line in the graph be changed to read "40% and 30% units" instead of the current "40%.". Other comment stated: Based on interpretation of amended 2306.6710(b)(C) and 2306.6710(e)(1), it is recommended that point structure be revised. Comment also support current cap of 40% at 50% AMGI. A typographical error was pointed out in paragraph (13).

Department Response: Staff does not concur with the legislative interpretation that point structure needs revision. While staff believes it may be possible to split this section out into separate categories for rents and incomes, the Department is concerned about a major revision such as this; therefore, staff will recommend that this issue be addressed by the 2005 Working Group. Staff notes that rent level and income are most meaningful when considered together. Staff concurs that clarification is needed and will be more clear in specifically excluding 30% units for point eligibility in this section. To address the typographical error, staff recommends adding the word "not" before the figure 35.05%.

"(A) No more than 40% 50% of the total number of low income units (including Units at 60% and 30% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50% and, 40% and 30% AMGI categories. No more than 15%30% of the total number of low income targeted units will be counted as designated for tenants at or below 40% of the AMGI for purposes of determining the points in the 40% and 30% AMGI categories. No more than 20% of the total number of low income targeted units will be counted as designated for tenants at or below 30% of the AMGI for purposes of determining the points in the 30% AMGI category. For purposes of calculating "Total Low Income Targeted Units" for this exhibit, Units at 30% and 60% of AMGI are also included.

(B) For purposes of calculating points In the table below no Unit may be counted twice in determining point eligibility. Use normal rounding to the hundredth to calculate the percentages, points and "Total Points" for 40% and 50% Units. In calculating the percentages, the denominator includes every low income Unit in the Development, not just the 40% and 50% Units. Normal rounding disregards all digits that are more than one decimal place past the digit rounded; therefore, the thousandths place must not be rounded prior to rounding to the hundredth, e.g. 35.0449% equals 35.04%, not 35.05%. To calculate "Rounded Total Points" disregard the hundredth place in "Total Points" and round normally, eg. 7.50 equals 8 and 7.49 equals 7. The final total points requested must be a whole number consistent with this rounding methodology.

(C) Developments should be scored based on the structure in the table below. Only Developments located in cities (or counties for Developments not located within a city) whose AMGI is below the statewide AMGI, may use Weight Factor B. All other Applicants are required to use Weight Factor A."

Board Response: Department's response accepted.

§50.9(g)(13) and (14) - Selection Criteria - Low Income Targeting and Leveraging

Comment: Comment points to the fact that the provision in the draft QAP is inconsistent with the §42(m)(1)(B)(ii) of IRS Code regarding the treatment of developments in the Qualified Census Tracts (QCTs). Specifically, the provision assigns fewer points to developments in QCT's for providing the same or even more units at 30% AMGI than those outside QCTs. The simplest answer is to do away with this preferential scoring and simply have QCT location be a tie breaker. Comment received also indicates that the number of points awarded for the production of housing affordable to families between 0% and 30% of AMI be increased and one comment suggested the points be equal. The 2004 QAP Working Group recommended fewer points in this category than in 13 in order to reward applicants that get outside funding and then use this funding to produce 30% units. In the draft, the points are higher for Paragraph 14 than they are 13 and this should be reversed. Even though the Applicants are getting points for leveraging, they are not required to have the $12,500 to $25,000 per unit amount needed to support 30% units. It is recommended that the points go from 6/10/14 to 3/6/9. It was the intent of the QAP Working Group that entities willing to commit funds to get 30% units should get more points than entities just using funds as leveraging for greater affordability. Comment indicated a discrepancy between terminology of the sections as it relates to subsidy sources. Comment also encourages that local HOME funds continue to receive points for leveraging. A typographical error was also pointed out.

Also since leveraging implies bringing outside funds to the table the exemption for identity of interest voucher funding from a PHA should be eliminated. A PHA can take the same vouchers to low income targeting (Paragraph 13) and create 30% units. Additionally, it appears the HUD Section 202 and HUD Section 811 Capital Advance Programs were inadvertently left out after "….Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, and must be in the form of a grant or a forgivable loan." It is recommended that to qualify for the points at least 20% of the total development costs be provided, whether by grant, contribution or loan, from a non-related political entity. Since most rural areas are non participating jurisdictions, rural developments would qualify for these points if funding was provided by TDHCA's HOME or Housing Trust Fund. Comment also seeks clarification as to whether or not the Department intended that HOPE VI not to qualify for these points, or is it an oversight. To require the developer to secure soft money funds is a burdensome requirement.

Department Response: The Department recognizes the inadvertent inconsistency with §42 and recommends a change in language that does away with the dichotomy between QCTs and non-QCTs for this scoring item. Also, as noted later in this document, QCT location has been added as a tie breaker. While one

comment was made that points be equal, §22 of SB264 is explicit in its requirements to prioritize 30% units. Staff concurs with the suggested changes that corrects the typographical error, allows for the priority of points to 30% units by reducing points for leveraging, to reduce the current $25,000 per unit to $12,500, and the clarification of language between the 2 sections.

Staff does not agree that the exemption for identity of interest voucher funding from a PHA should be eliminated because staff values any leveraging. Staff does not recommend the suggested requirement that to qualify for points at least 20% of the total development costs be provided, whether by grant, contribution or loan, from a non-related political entity. The addition of HOPE VI, HUD 811 and an exception for state HOME funds for non-Participating Jurisdictions has been added.

"(13) Low Income Targeting Points for Serving Residents at 30% of AMGI (up to 12 points). Applications that propose Units with rents set at 30% AMGI and reserved for occupancy by extremely low-income (those earning annual gross incomes of 30% or less of the AGMI) will be awarded up to 12 points. Developments must have a source of financing for the 30% units. Applicant must submit evidence that the proposed Development has either received development -based rental assistance from a governmental or non-governmental entity, which does not have an identity of interest with the Applicant (with the exception of Applications involving Public Housing Authorities); or received an allocation of funds for on-site Development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202, HUD Section 811 and HUD Section 8 and must be in the form of a grant or a forgivable loan (with the exception of Applications involving Public Housing Authorities). Points will be determined on a sliding scale based on the percentage of 30% units. The Development must have already applied for funding from the funding entity. Evidence at the application stage shall include a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from TDHCA's HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. In order to qualify for these points, the Applicant must provide a 5 year rental assistance contract for development-based vouchers for each 30% Unit or grant funds of $12,500 per 30% Unit. Use normal rounding.

(A) 3% to 5% of total Development Units at 30% AMGI receives 8 points; or

(B) 6% to 8% of total Development Units at 30% AMGI receives 10 points; or

(C) 9% to 10% of total Development Units at 30% AMGI receives 12 points.

(14) Leveraging from local and private resources. An Application may qualify for points under only one of subparagraphs (A) or (B) of this paragraph. However, if an Applicant has requested points under paragraph 13 of this section, the Application is not eligible to receive points under this paragraph. (maximum of 9 points)

(A) Evidence that the proposed Development has received an allocation of funds for on-site development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202 , HUD Section 811 and HUD Section 8 and must be … normal rounding. No funds from TDHCA's HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. (up to 9 points).

(i) A contribution of $500 to $1,000 per Low Income Unit receives 3 points; or

(ii) A contribution of $1,001 to $3,500 per Low Income Unit receives 6 points; or

(iii) A contribution of $3,501 to $6,000 per Low Income Unit receives 9 points; or

(B) Evidence that the proposed Development is partially funded by development-based Housing Choice or rental assistance vouchers from a governmental or non-governmental entity for a minimum of five years. Such entity cannot have an identity of interest with the Applicant with the exception of Applications involving Public Housing Authorities. Evidence … feasibility. No funds from the Department's HOME or Housing Trust Fund sources will qualify under this category. Use normal rounding. (up to 9 points).

(i) Development-Based Vouchers for 3% to 5% of the total Units receives 3 points; or

(ii) Development-Based Vouchers for 6% to 8% of the total Units receives 6 points; or

(iii) Development-Based Vouchers for 9% to 10% of the total Units receives 9 points."

Board Response: Department's response accepted.

§50.9(g)(15) - Selection Criteria-Length of Affordability Period

Comment: One point should be allowed for 5 additional years and 2 points for 10 years. The points should be consistent with the Legislative rankings in SB 264 and a maximum of 2 points is sufficient to satisfy the policy.

Department Response: Legislation does not prohibit the current structure. Staff recommends no change.

Board Response: Department's response accepted.

§50.9(g)(15) - Senior or Homeless Populations

Comment: It is recommended that three points should be allowed for developments serving elderly or homeless populations. Again, the legislature has determined the priority of developments and these populations were not ranked. While it could be argued that they could qualify for up to 5 points, it is recommended that 3 points be used.

Department Response: The Department disagrees. Chapter 2306, as well as §42, IRC, direct the Department to score a

number of criteria other than the nine located in 2306.6710. §2306.6710 does not state that all other criteria must be scored below the nine listed in §2306.6710. The Department seeks to fulfill the purpose of CH 2306 and §42, and to harmonize the statutory language from all sources. No changes are recommended.

Board Response: Department's response accepted.

§50.9(g)(16) - Selection Criteria - Right of First Refusal

Comment: It is recommended that two points should be granted for providing a right of first refusal to those entities listed in §2306.6725(b)(1) and only such entities. Since the Legislature has required appropriate incentives for executing an agreement to provide a right of first refusal to specified entities, the legislative requirement would be violated by expanding the list of eligible organizations or entities.

Department Response: Staff suggests establishing this as an item for the 2005 QAP Working Group. Staff recommends no change at this time and believes the provision is consistent with §42 and Ch. 2306.

Board Response: Department's response accepted.

§50.9(g)(16) - Notice to PHA of accepting Section 8 waiting list

Comment: It is proposed that one point be awarded for committing to a PHA that it will accept tenants from its waiting list.

Department Response: Staff makes a certification regarding this threshold item. Having it be moved to selection is unnecessary.

Board Response: Department's response accepted.

§50.9(g)(17) - Selection Criteria - Pre-Application Points

Comment: It is recommended that five points should be available for all applications filed during the pre-application period. Other comment suggests that it is difficult to predict points for support and opposition and the item should be deleted from the self-score. Comment also noted that a typographical error existed in the reference to the support and opposition letters.

Department Response: The Department believes, after discussion in the 2004 QAP Working Group that the current number of points is acceptable and supported. The exemption of support and opposition points from the pre-application was already mentioned in the QAP and will remain there. The typographical error is remedied below.

"(D) be awarded by the Department achieve an Application score that is not more than 5% greater or less than the number of points awarded by the Department requested at Pre-Application, with the exclusion of points for support and opposition under subsections (g)(2) and (g)(6)(C) of this title. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:"

Board Response: Department's response accepted.

§50.9(g)(18) - Selection Criteria - Point Reductions

Comment: One person recommended stronger point penalties for items already on the ineligibility list. Comment suggests that point reductions should be imposed on only meaningful transgressions such as missing carryover or failure to close the construction loan within the applicable time period for new construction. It is further recommended that substantial penalties be imposed for an applicant that submits false information especially for non-disclosure of previous removal for failure to perform its obligations. Additionally, it is recommended that a penalty of 5 points be imposed on an application that exceeds by 10% the average of tax credits requested per unit of all other applicant's in the region. Public policy demands the efficient use of tax credits.

Department Response: Because of the substantive revisions required to promulgate these suggested changes, and the adverse effects these changes could cause to individuals who were not affected by the rule as proposed, staff suggests establishing this as an item for the 2005 QAP Working Group. Staff recommends no change at this time.

Board Response: Department's response accepted.

§50.9(h)- Tie Breaker Factors

Comment: Comment also suggested that for consistency with the §42 requirement regarding QCTs, a tie breaker factor should be reinstated for developments in QCT's. Comment was received that it was unclear how ties between developments (both 9% and 4%) would be handled throughout the year for the one mile rule (both the three year and the one year) and for application of the capture rate evaluation.

Department Response: The Department concurs that this change is necessary for compliance with §42. The following language is proposed to be added as (h)(5). Staff also has added language that identifies how ties for the one mile rule and capture rate evaluation will be handled. This requires some renumbering of the section.

"(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §50.5(a)(8) and §50.6(f), 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 lot number issued during the Bond Review Board lottery 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 (h)(1) of this subsection. When a Tax Exempt Bond Development and a competitive Housing Tax Credit Application in the Application Round would both violate one of these restrictions, the following determination will be used:

(A) Tax Exempt Bond Developments that have received their reservation from the Bond Review Board prior to April 30, 2004 will take precedence over the Housing Tax Credit Application in the 2004 Application Round; and

(B) Housing Tax Credit Applications in the 2004 Application Round will take precedence over the Tax Exempt Bond Developments that have received their reservation from the Bond Review Board between May 1, 2004 and July 31, 2004; and

(C) After July 31, 2004, a Tax Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2004 Application Round on the Waiting List. However, if no reservation has been issued, then the Waiting List Application will be eligible for its allocation first."

Board Response: Department's response accepted.

§50.10(a)(2)(K) - Board Decisions

Comment: Comment suggests that while it recognizes the scoring constraints in legislation and the Department's sensitivity and

efforts to support fair housing, the Department should include an "affirmatively furthering fair housing" factor in scoring.

Department Response: The Department currently includes fair housing law as a specific discretionary factor that the Board may apply in making allocation decisions. The Board is authorized to not rely solely on points but may consider this and other named discretionary factors. To clarify the scope of fair housing law, staff recommends amending the rule to add, "…including affirmatively furthering fair housing." For the 2005 QAP, further input and discussion on how this item may be specifically scored will be sought.

"(K) laws relating to fair housing, including affirmatively furthering fair housing;"

Board Response: Department's response accepted.

§50.11 - Required Notifications

Comment: If the Department receives an opposition notice from the presiding officer of a community to a development, it would be beneficial for the department to notify the applicant of the opposition. As noted earlier, comment suggested that there should be notification provisions to individuals and organizations who might need or want to live in housing or who would otherwise support development of housing. Comment recommends that points be awarded for advocacy organizations, social service agencies, civil rights organizations, tenant organizations, as well as others who may have an interest in securing the development of affordable housing.

Department Response: Staff concurs and suggests the following language change to provide notice. The Department concurs that notifying these entities would be beneficial. However, the Department will be adding this item to §50.11. The QAP already indicates that Applicants will be notified of any opposition.

"(ix) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing."

Board Response: Department's response accepted.

§50.14(a)(4) -Carryover, 10% Test

Comment: It is recommended that the Fair Housing Training be required if the Development Owner and the Architect have not previously attended such training until such time as there is a change in the fair housing laws.

Department Response: Staff recommends no changes because of the importance of this training and possible new developments.

Board Response: Department's response accepted.

§50.15 - Closing of the Construction Loan

Comment: It is recommended that §50.15(a) be amended to provide for the reality of the inherent delays in obtaining construction loan documents for those developments relying on the Department for construction financing. Thus, the deadline for such properties would be the later of June 1 or 15 days after the construction loan is closed. Additionally, clarification was requested for the difference between 9% and 4% programs by adding, for tax exempt bond transactions, the evidence must be submitted not later than one year from the date of the Determination notice.

Department Response: Because of the time constraints put on staff and legislative requirements, staff recommends no date changes for 9% tax credits at this time. The department concurs with the recommendation for tax exempt bond transactions and recommends the following language:

"(a) Closing of the Construction Loan. The Development Owner must submit evidence of having closed the construction loan. The evidence must be submitted no later than June 1 the second Friday in June of the year after the execution of the Carryover Allocation Document, and no later than 14 days after the closing of the construction loan for Tax Exempt Bond Developments, with the possibility of an extension as described in §50.21 of this title. 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. The Carryover Allocation will automatically be terminated if the Development Owner fails to meet the aforementioned closing deadline (taking into account any extensions), and has not had an extension approved, and all credits previously allocated to that Development will be recovered and become a part of the State Housing Credit Ceiling for the applicable year. Owners of Tax Exempt Bond Developments will be fined $2,500 if this requirement is not fulfilled."

Board Response: Department's response accepted.

§50.17(g) - Housing Credit Allocations

Comment: It is recommended that the Department accept the inspections performed by TX-USDA-RHS for properties receiving financing from that governmental entity. See also companion revisions to §50.19(b) and §50.21(h).

Department Response: Staff concurs with the recommendation and suggests the following changes:

"(g) Development inspections shall be required to show that the Development is built or rehabilitated according to required plans and specifications. At a minimum, all Development inspections must 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 Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §4950.21 of this title. For properties receiving financing through TX-USDA-RHS, the Department shall accept the inspections performed by TX-USDA-RHS in lieu of having other Third party Inspections."

Board Response: Department's response accepted.

§50.18(b) - Appeals Process

Comment: Comment request a change in the current appeals process so that a board decision can be appealed if it is a "bad decision."

Department Response: The appeals policy, as integrated into the QAP, is a legislative directive that can not be altered.

Board Response: Department's response accepted.

§50.18(e) - Sale of Certain Tax Credit Properties

Comment: It is recommended that the procedure for the sale of certain tax credit properties to selected entities be revised to conform with the right of first refusal to tenant organizations or a qualified nonprofit entity.

Department Response: This section is consistent with §2306.6726, Texas Government Code. Staff recommends no changes.

Board Response: Department's response accepted.

§50.18(h)- Alternative Dispute Resolution

Comment: As noted under §50.3(1), it was recommended that the definition of Administrative Deficiency be revised to provide for alternative dispute resolution (ADR) as required by SB 264. Comment also recommended the addition of ADR at other points in the tax credit process.

Department Response: As one step in implementing a policy to encourage the use of appropriate ADR procedures pursuant to §2306.082, the Department is recommending that a policy regarding ADR be added to this section of the QAP. (This section responds to any mention of ADR in any public comment and should be considered a response for the entire document):

"(h)-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 and nonbinding arbitration. 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 process, the person may send a proposal to the Department's General Counsel and Dispute Resolution Coordinator. The proposal should describe the dispute and the details of the process proposed (including proposed participants, third party, when, where, procedure, and cost). The Department will evaluate whether the proposed process would fairly, expeditiously, and efficiently assist in resolving the dispute and promptly respond to the proposal."

Board Response: Department's response accepted.

§50.19(b) - Housing Credit Allocations

Comment: It is recommended that the Department accept the inspections performed by TX-USDA-RHS for properties receiving financing from RHS. See also companion revisions to §50.17(g) and §50.21(h).

Department Response: The QAP already was drafted to accept the TX-USDA-RHS inspections in this section of the QAP. No changes are recommended.

Board Response: Department's response accepted.

§50.21(h) - Housing Credit Allocations

Comment: It is recommended that the Department accept the inspections performed by TX-USDA-RHS for properties receiving such financing from RHS.

Department Response: Staff concurs with the recommendation and suggests the following changes:

"(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.$500 Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development. 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."

Board Response: Department's response accepted.

§50.21(k) - Extension Requests

Comment: The initial extension should be an automatic one approved at the staff level since generally a Developer does not know until the last minute that a closing has fallen through.

Department Response: Because the Board has been clear in its interest in keeping track of all extensions, no change to the current language is recommended.

Board Response: Department's response accepted.

No Section (Proposed) - Migrant Housing Needs

Comment: Comment requests that migrant housing be categorized as a "special need". Additionally, it is recommended that the Department establish, through the scoring criteria and appropriate set asides, sufficient funds to allow for the rehabilitation or demolition and reconstruction of existing substandard migrant labor housing and to undertake a statewide assessment of migrant housing needs.

Department Response: Because of the substantive revisions required to promulgate this change, staff suggests establishing this as an item for the 2005 QAP Working Group. Staff recommends no change at this time.

Board Response: Department's response accepted.

No Section (Proposed) - Minimum Threshold Score

Recommendation: Comment would like TDHCA staff to consider establishing a minimum score for an application to be eligible for an allocation. The TDHCA Board mentioned this concept once at a meeting and it made good sense. A score in the vicinity of 50 - 60 would be appropriate.

Department Response: Staff does not agree with the proposed suggestion to establish a minimum score for an application to be eligible for an application for 2004. Because of the substantive revisions required to promulgate this change, staff suggests establishing this as an item for the 2005 QAP Working Group. Staff recommends no change at this time.

Board Response: Department's response accepted.

No Section (Proposed) Selection Criteria-28

Recommendation: Award points for leveraging funds with the 514 and 538 programs

Department Response: The Department is interested in looking into this idea, but to ensure appropriate comment regarding the leveraging, staff will need more time to research this. Staff will suggest this as an item for the 2005 QAP Working Group. Staff recommends no change at this time.

Board Response: Department's response accepted.

The new sections are adopted pursuant to the authority of Chapters 2306, 2001, and 2002, Texas Government Code, V.T.C.A., and Section 42 of Internal Revenue Code of 1986, as amended,

(26 U.S.C. Section 42) which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing credit allocations in the State of Texas.

Section 42 of Internal Revenue Code of 1986, as amended, (26 U.S.C. Section 42), provides for credits against federal income taxes for owners of qualified low income rental housing projects. That section provides for the allocation of available tax credit amount by state housing credit agencies. As required by the Internal Revenue Code, Section 42 (m)(1), the Department developed a Qualified Allocation Plan which was adopted by the governing board of the Department and submitted to the Governor in accordance with Texas Government Code Section 2306.6724 and is contingent upon the Governor's approval in accordance with Texas Government Code Section 2306.6724(c).

No other code, article or statute is affected by these new sections.

§50.1. Purpose, Program Statement, Allocation Goals.

(a) Purpose. 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, 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 Executive Order AWR-92-3 (March 4, 1992), the Department was 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 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.

(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, and to promote maximum utilization of the available tax credit amount. The processes and criteria utilized to realize this goal are described in §§50.8 and 50.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title.

§50.2. Coordination with Rural Agencies.

To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to achieve increased sharing of information, reduction of processing procedures, and fulfillment of Development compliance requirements in rural areas, the Department has entered into a Memorandum of Understanding (MOU) with the TX-USDA-RHS to coordinate on existing, rehabilitated, and new construction housing Developments financed by TX-USDA-RHS; and will jointly administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). 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.

§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) Administrative Deficiencies--The absence of information or a document from the Application which is important to a review and scoring of the Application and is required under §§50.8(d) and 50.9(e), (f) and (g) of this title.

(2) 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 at least a 10% ownership interest.

(3) 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.

(4) 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).

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit, as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at 10 basis points above the greater of:

(i) the current applicable percentage for the month in which the Application is submitted to the Department, or

(ii) the trailing 1-year, 2-year or 3-year average rate in effect during 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 Code, §42(b) for the most current month; or

(iii) The percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation.

(7) Application--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material.

(8) 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 as more fully described in §§50.9(a) and 50.22 of this title. For Tax Exempt Bond Developments this period is that period of time prior to the deadline stated in §50.12 of this title.

(9) 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.

(10) 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.

(11) 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.

(12) At-Risk Development--a Development that:

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, equity incentive, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(i) Sections 221(d)(3), (4) and (5), National Housing Act (12 U.S.C. Section 1715l);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) any project-based assistance authority pursuant to Section 8 of the U.S. Housing Act of 1937;

(vi) Sections 514, 515, 516, and 538 Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); and

(vii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 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, except that a Housing Authority proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund, will be qualified as an At-Risk Development if it meets the requirements described in §50.7(b)(3) of this title. Redevelopment of any type must include the same site as the original development to qualify in this set-aside."

(D) Developments must be at risk of losing all affordability 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.

(13) Bedroom--A portion of a Unit set aside for sleeping 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.

(14) Board--The governing Board of the Department.

(15) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E) and Treasury Regulations, §1.42-6.

(16) Carryover Allocation Document--A document issued by the Department, and executed by the Development Owner, pursuant to §50.14 of this title.

(17) 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.

(18) 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.

(19) Colonia--A geographic area located in a county some part of which is within 150 miles of the international border of this state and that:

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

(B) has the physical and economic characteristics of a colonia, as determined by the Texas Water Development Board.

(20) Commitment Notice--A notice issued by the Department to a Development Owner pursuant to §50.13 of this title and also referred to as the "commitment."

(21) 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).

(22) 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.

(23) 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.

(24) 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).

(25) 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.

(26) 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 affordability period.

(27) 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 15% of the Eligible Basis) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(28) Development--A proposed qualified low income housing project, for new construction or rehabilitation, as defined by the Code, §42(g), 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.

(29) 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.

(30) 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 approved by the Department.

(31) 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.

(32) Economically Distressed Area--Consistent with §17.921, 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.

(33) Eligible Basis--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42(d).

(34) Executive Award and Review Advisory Committee ("The Committee")--A Departmental committee that will make funding and commitment recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306, Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities.

(35) 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.

(36) 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."

(37) 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.

(38) Governmental Entity--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(39) Guarantor--Means any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(40) Historic Development--A residential Development that has received a historic property designation by a federal, state or local government entity.

(41) 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.

(42) 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 title, the Department is the sole "Housing Credit Agency" of the State of Texas.

(43) Housing Credit Allocation--An allocation by the Department to a Development Owner of Housing Tax Credit in accordance with the provisions of this title.

(44) 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.

(45) 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.

(46) HUD--The United States Department of Housing and Urban Development, or its successor.

(47) 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.

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

(C) Any Qualified Elderly Development with any Units having more than two bedrooms.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Development proposing new construction, other than a Development (new construction or rehabilitation) composed entirely of single-family dwellings, having any Units with four or more bedrooms.

(F) Any Development that violates the Integrated Housing Policy of the Department.

(G) Any Development involving new construction (other than a Qualified Elderly Development, a single family development or a transitional housing development) in which any of the designs in clauses (i) through (iii) of this subparagraph are proposed. For purposes of this limitation, a den, study or other similar space that could reasonably function as a bedroom will be considered a bedroom.

(i) more than 60% of the total Units are one bedroom Units; or

(ii) more than 45% of the total Units are two bedroom Units; or

(iii) more than 35% of the total Units are three bedroom Units.

(48) IRS--The Internal Revenue Service, or its successor.

(49) 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.

(50) Material Non-Compliance--A property located within the state of Texas will be classified by the Department as being in material non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §50.5(b)(3) of this title and under the methodology and point system set forth in Chapter 60 of this title. A property located outside the state of Texas will be classified by the Department as being in Material Non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §50.5(b)(4) of this title and under the methodology and point system set forth in Chapter 60 of this title.

(51) 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.

(52) ORCA--Office of Rural Community Affairs, as established by Chapter 487, Texas Government Code.

(53) Person--Means, 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.

(54) 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. Section 15002),or

(C) has a disability, as defined in 24 CFR §5.403.

(55) 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 §§50.8 and 50.22 of this title.

(56) Pre-Application Acceptance Period--That period of time during which Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(57) 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 and Special LP and Principals with at least 10% 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 ten percent or more interest in the corporation; and

(C) limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(58) Prison Community--A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison within the past five years.

(59) 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.

(60) Qualified Allocation Plan (QAP)-- A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, §42(m)(1) and as further provided in this chapter, that:

(A) provides the threshold and scoring, and underwriting process based on housing priorities of the Department that are appropriate to local conditions; and

(B) consistent with §2306.6710(e), Texas Government Code, gives preference in Housing Credit Allocations to Developments that, as compared to 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 Housing Tax Credit Program; and

(C) provides a procedure for the Department, the Department's agent, or private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan, notifying the IRS of noncompliance, and monitoring for noncompliance with habitability standards through regular site visits.

(61) 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).

(62) 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).

(63) 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. Section 3607(b)).

(64) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or 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.

(65) 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 TX-USDA-RHS Set-Aside.

(66) Qualified Nonprofit Development--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, 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).

(67) 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.

(68) Related Party-- 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.

(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 percent 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 percent 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 percent 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 percent of the outstanding stock of the corporation; and

(II) 50 percent 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 percent of the outstanding stock of each corporation;

(xi) an S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xii) a partnership and a person or organization owning more than 50 percent 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 percent of the capital interests or profits' interests.

(69) Rules--The Department's Housing Tax Credit Qualified Allocation Plan and Rules as presented in this title.

(70) 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 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for new construction or rehabilitation funding by TX-USDA-RHS.

(71) Rural Development--A Development located within a Rural Area and for which the Applicant applies for tax credits under the Rural Regional Allocation.

(72) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §50.9(g) of this title.

(73) Set-Aside--A reservation of a portion of the available Housing Tax Credits to provide financial support for specific types of housing or geographic locations or serve specific types of Applicants as permitted by the Qualified Allocation Plan on a priority basis.

(74) State Housing Credit Ceiling--The limitation imposed by the Code, §42(h), 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).

(75) 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 in section 152) of another individual, or

(ii) married and file a joint return."

(76) Tax Exempt Bond Development--A Development 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.

(77) Third Party--A Third Party is a Person who is not an:

(A) 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) Person(s) receiving any portion of the contractor fee or developer fee.

(78) Threshold Criteria--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §50.9(f) of this title.

(79) 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.

(80) TX-USDA-RHS--The Rural Housing Services (RHS) of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(81) Unit--Any residential rental unit in a Development consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

§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. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§50.5. Ineligibility, Disqualification and Debarment, Applicant Standards, Representation by Former Board Member or Other Person.

(a) Ineligibility. An Application will be 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,

(2) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, 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 action under state or federal securities law; 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 on or before the close of the Application Acceptance Period. 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 is unresolved as of the date the Application is submitted; or

(5) 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) 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 percent 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 percent 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, if located 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 unless the Applicant:

(A) has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development in the form of a resolution; and

(B) has included in the Application a written statement of support from that governing body referencing this rule and authorizing an allocation of housing tax credits for the Development; or

(8) The Applicant proposes to construct a new Development that is located one linear mile (measured by a straight line on a map) or less from a Development that:

(A) serves the same type of household as the new Development, regardless of whether the Developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of Housing Tax Credits (including Tax Exempt Bond Developments) for 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. Section 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. Section 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) through (C) of this paragraph.

(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. For example, a Development whose credits were approved by the Board on March 15, 2002, could not have a new Development located within one mile until March 16, 2005. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(h) of this title.

(b) Disqualification and Debarment. The Department will disqualify an Application, and/or debar a Person (see 2306.6721, Texas Government Code), if it is determined by the Department that those issues identified in paragraphs (1) through (6) of this subsection exist. The Department shall debar a Person for the longer of, one year from the date of debarment, or until the violation causing the debarment has been remedied. Causes for disqualification and debarment include:

(1) The provision of fraudulent information, knowingly false 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) 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, the deputy executive director for programs, the deputy executive director for housing operations, the director of multifamily finance production, the director of portfolio management and compliance or the director of real estate analysis employed by the Department.

(3) The Applicant, Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas funded by the Department is in Material Non-Compliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property on the date the Application Round closes or upon the date of filing Volume I of the Application for a Tax Exempt Bond Development, and such Material-Noncompliance is not corrected as provided herein. Any corrective action documentation affecting the Material Non-Compliance status score for Applicants competing in the 2004 Application Round must be received by the Department no later than 30 days prior to the close of the Application Acceptance Period, and any corrective action documentation affecting the Material Non-Compliance status score for Applicants with a Tax Exempt Bond Development must be received by the Department no later than 30 days prior to the submission of Volumes I and II. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §50.9(f)(9)(C) and (D) of this title; however, the records of the Department are Controlling; or,

(4) The Applicant, Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on the Uniform Application Previous Participation Certification and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department using methodology as set forth in Chapter 60 of this title, to be proposed; or,

(5) 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 billed by the Department after the due date has passed, as further described in §50.21 of this title; or

(6) the Applicant or a Related Party, the Development Owner, or the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of the Development, or individual employed as a lobbyist or in another capacity on behalf of the Development, communicates with any Board member with respect to the Development during the period of time starting with the time an Application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application. Communication with Department staff must be in accordance with §50.9(b) of this title; violation of the communication restrictions of §50.9(b) is also a basis for disqualification and/or debarment.

(7) 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 Section 2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(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:

(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

(6) the Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner. (See §2306.223, Texas Government Code).

(d) Representation by Former Board Member or Other Person.

(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 an offense if the Person violates this section. An offense under this section is a Class A misdemeanor. (See 2306.6733, Texas Government Code).

(e) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) through (d) of this section will first be notified in accordance with the Administrative Deficiency process described in §50.9(d)(3) of this title. They may also utilize the appeals process described in §50.18(b) of this title.

§50.6. Site and Development Restrictions: Floodplain, Ineligible Building Types, Scattered Site Limitations, Credit Amount, Limitations on the Size of Developments, Rehabilitation Costs.

(a) Floodplain. Any Development proposing new construction 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 Developments proposing rehabilitation, 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(47) of this title will not be considered for allocation of tax credits.

(c) Scattered Site Limitations. Consistent with §50.3(28) of this title, 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.

(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. 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. In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has 76 Units or less. 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 Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:

(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.

(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Analysis clearly documents that larger developments are consistent with the comparables in the community and that there is significant demand for additional Units. Rural Developments involving only rehabilitation do not have a size limitation.

(3) Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units, wherein the maximum rent restricted Units will be limited to 200 Units. Tax Exempt Bond Developments will be limited to 250 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months.

(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, housing tax credits to more than one Development in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2004 are Harris, Dallas, Tarrant and Bexar Counties). For Tax Exempt Bond Developments, the year of the Development is the calendar year in which the Board approves the housing tax credits for the Development. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(h).

(g) Rehabilitation Costs. Rehabilitation Developments must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $6,000 per Unit in direct hard costs.

(h) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

§50.7. Regional Allocation Formula, Set-Asides, Redistribution of Credits.

(a) Regional Allocation Formula. As required by 2306.111, Texas Government Code, the Department uses a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling to all urban/exurban areas and rural areas. The formula is based on the need for housing assistance, and the availability of housing resources in those urban/exurban areas and rural areas, and the Department uses the information contained in the Department's annual state low income housing plan and other appropriate

data to develop the formula. This formula establishes separate targeted tax credit amounts for rural areas and urban/exurban areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published in the Texas Register and 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/exurban areas is referred to as the Urban/Exurban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition or be located in a Prison Community. Approximately 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS and that meet the definition of a Rural Development and do not exceed 76 Units if new construction. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside.

(b) Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies:

(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 organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the organization's 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.

(2) At least 15% of the allocation to each Uniform State Service Region will be set aside for allocation under the At-Risk Development Set-Aside. 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(12) of this title and in both urban/exurban and rural communities in approximate proportion to the housing needs of each Uniform State Service Region. A Housing Authority proposing reconstruction of public housing supplemented with HOPE VI funding will be eligible to participate in this set-aside. In order to qualify for this set-aside, the housing authority providing the HOPE VI funding must provide evidence that it received a HOPE VI grant from HUD and made a commitment that HOPE VI funds will be provided to the Development. 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(12)(A) of this title, or provide evidence that it will renew, retain or preserve the financial benefit described in §50.3(12)(A) of this title.

(c) Redistribution of Credits. If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Rural Regional Allocation and Urban/Exurban Regional Allocation within each Uniform State Service Region and among the Set-Asides, 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(c) of this title and the level of demand exhibited in the Uniform State Service Regions during the Allocation Round. However as described in subsection (b)(1) 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-Application: Submission, Evaluation Process, Threshold Criteria and Review, Results.

(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 §50.21 of this title. 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 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 title.

(c) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, and if requested by the Applicant, evaluated in regard to the inclusive capture rate as restricted under §1.32(g)(2) of this title. Any Application from a TX-USDA-RHS 515 Development (including new construction and rehabilitation) is exempted from the Pre-Application Evaluation Process and is not eligible to receive points for submission of a Pre-Application. An Application that has not received confirmation from the state office of RHS of its financing from TX-USDA-RHS may qualify for Pre-Application points, but such points shall be withdrawn upon the Development's receipt of TX-USDA-RHS financing. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §50.9(d)(3) of this title.

(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 "Pre-Application Self-Scoring Form," and

(2) Evidence of site control as evidenced by the documentation required under §50.9(f)(7)(A) of this title.

(3) Consistent with §50.9(f)(8)(B) of this title, evidence that all of the notifications required under that section have been made prior to the close of the Pre-Application Acceptance Period.

(e) Pre-Application Results. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (c) of this section and §50.9(g)(17) of this title, 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, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation 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 §50.21 of this title, to the Department during the Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their 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 both threshold and selection criteria documentation. An Applicant may not change or supplement an Application in any manner after the filing deadline, except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §50.3(1) of this title or to the amendment of an Application after a commitment or allocation of tax credits as further described in §50.18 of this title.

(b) Communication with the Department. Applicants that submit a Pre-Application or Application are restricted from communication with Department staff as described in this subsection. The Applicant or a Related Party, the Development Owner, or the General Contractor, or any Affiliate of the General Contractor, that is active in the ownership or Control of the Development, or individual employed as a lobbyist or in another capacity on behalf of the Development, may communicate with an employee of the Department with respect to the Development so long as that communication satisfies the conditions established under paragraphs (1) through (5) of this subsection. §50.5(b)(6) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(1) The communication must be restricted to technical or administrative matters directly affecting the Application;

(2) The communication must occur or be received on the premises of the Department during established business hours;

(3) Communication with the Executive Director, the Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Single Family Finance Production, the Director of Portfolio Management and Compliance, and the Director of Real Estate Analysis of the Department must only be in written form which includes electronic communication through the Internet; and

(4) Communication with other Department staff may be oral or in written form which includes electronic communication through the Internet; and

(5) a record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication.

(c) Adherence to Obligations. 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, in accordance with the LURA.

(d) Evaluation Process. Applications will be reviewed according to the process outlined in this subsection.

(1) Threshold Criteria Review. Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of Administrative Deficiencies, in which event the Applicant may be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be rejected and the Applicant will be provided a written notice to the effect that the Threshold Criteria have not been met. 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) Selection Criteria Review. For an Application to be considered under the Selection Criteria, the Applicant must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the Selection Criteria listed in subsection (g) of this section. Where 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. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for purposes of releasing the Submission Log in ranked order by score.

(3) 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. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within eight business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the

deficiency remains unresolved. If deficiencies are not clarified or corrected within ten business days from the deficiency notice date, 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.

(4) Subsequent Evaluation of Prioritized Applications. After the Application is scored under the Selection Criteria, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. This prioritization order will also be used in making recommendations to the Board. Assignments will be determined by first selecting the Applications with the highest scores in the Nonprofit Set-Aside statewide. Then selection will be made for the Applications with the highest scores in the At-Risk and TX-USDA-RHS Set-Asides within each Uniform State Service Region. Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments, regardless of Set-Aside, in accordance with the requirements under §50.7(a) of this title for a Rural Regional Allocation and Urban/Exurban Regional Allocation. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban/Exurban Regional Allocation. Funds for the Rural Regional Allocation within a region, for which there are no eligible feasible applications, will go to the Urban/Exurban Regional Allocation for that region and will not be shifted to Rural Developments in another region. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §50.6(d) of this title, 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 housing tax credits are allocated within the period required by law.

(5) 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 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. Receipt of feasibility points under subsection (g)(1) of this title 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 (g)(1) of this section.

(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 Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, 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. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant.

(6) Compliance Evaluation. 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 of all members of the ownership structure 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. Such inspection will evaluate the 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 TX-USDA-RHS Set-Aside, the Department may rely on the physical site inspection performed by TX-USDA-RHS.

(e) Required Pre-Certification and Acknowledgement Procedures. No later than 7 days prior to the close of the Application Acceptance Period, an Applicant must submit the documents required in this subsection to obtain the required pre-certification and acknowledgement.

(1) Experience Certificate. Upon receipt of the evidence required under this paragraph, a certification from the Department will be provided to the Applicant for inclusion in their 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, the individual must show that the units were successfully developed as required below, 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 $6,000 of direct hard cost per unit.

(A) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(i) at least 100 residential units; or

(ii) at least 36 residential units if the Development applying for credits is a Rural Development.

(B) One 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:

(i) that the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion.);

(ii) 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

(iii) the number of units completed or substantially completed.

(2) Financial Statement and Authorization to Release Credit Information. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Department will be provided to the Applicant for inclusion in their Application(s). 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 10% or more ownership interest 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. The statement must not be older than 90 days from the date of submission. If submitting partnership or corporate financials in addition to the statements of individuals, the certified financial statements, or audited financial statements, if available, should be for the most recent fiscal year ended 90 days prior to the day the documentation is submitted. This document is required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual. 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.

(3) Previous Participation. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Portfolio Management and Compliance Division will be provided to the Applicant for inclusion in their Application(s). A completed and executed "Previous Participation and Background Certification Form" as provided in the Application must be provided for each entity shown on an organizational chart as described in subsection (f)(9)(A) of this section that has 10% or more ownership interest in the Development Owner, 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. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2004 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.

(4) National Previous Participation. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Portfolio Management and Compliance Division will be provided to the Applicant for inclusion in their Application(s). If the Development Owner or any of its Affiliates shown on the organizational chart described in subsection (f)(9)(A) of this section that have 10% or more ownership interest in the Development Owner have, or have had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, then evidence must be submitted that such Persons have sent the "National Previous Participation and Background Certification Form" to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. Nonprofit entities and public housing authorities are only required to submit documentation for the entity itself; documentation for board members and executive directors is not required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. This form is only necessary when the Developments involved are outside the state of Texas. An original form is not required. Evidence of such notification shall be a copy of the form sent to the agency and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from the agency.

(f) Threshold Criteria. The following Threshold Criteria listed in paragraphs (1) through (15) of this subsection are mandatory requirements at the time of Application submission:

(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.

(2) Completion and submission of the Site Packet (Volume 2) 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. The Applicant must certify that they will satisfy at least the minimum point threshold for amenities as further described in subsection (g)(7)(D) 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 complete this exhibit. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(B) A certification that the Development will have all of the following Unit Amenities. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to complete this exhibit. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) Computer line/phone jack available in all bedrooms (only one phone line needed);

(ii) Mini blinds or window coverings for all windows;

(iii) Dishwasher and Disposal (not required for TX-USDA-RHS Developments);

(iv) Refrigerator;

(v) Oven/Range;

(vi) Exhaust/vent fans in bathrooms;

(vii) Ceiling fans in living areas and bedrooms; and

(viii) be designed in accordance with International Building Code.

(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 at a minimum to the International Building Codes or other locally adopted building codes.

(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. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

(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.

(F) A certification that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for individuals with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS), shall be deemed to meet this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for individuals with hearing or vision impairments. Additionally, in Developments where some Units are two-stories 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 in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. At the construction loan closing, a certification from an accredited architect will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for individuals with mobility impairments or individuals with hearing or vision impairments. A similar certification will also be required after the Development is completed. This requirement applies to all Developments including new construction and rehabilitation. Any Developments designed as single family structures must also satisfy the requirements of 2306.514, Texas Government Code.

(G) A certification that the Development will adhere to the 2000 International Energy Conservation Code (IECC) and the Department's Minimum Standard Energy Saving Devices in the construction of each tax credit Unit, historic preservation codes notwithstanding. Minimum Standard Energy Saving Measures are identified in clauses (i) through (v) of this subparagraph. 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 prior to the closing of the construction loan and in actual construction upon Cost Certification.

(i) Insulation values must meet the 2000 International Energy Conservation Code (IECC) for the region in which the development is located. Developments must also include soffit and ridge vents and insulated windows;

(ii) If newly installed, Energy Star or equivalently rated air handler and condenser; or heating and cooling systems with minimum SEER 12 A/C and 90% AFUE furnace if using gas; or in dry climates an evaporative cooling system may replace the Energy Star cooling system;

(iii) Water heaters to have an energy factor no less than .93 for electric or greater than .62 for gas;

(iv) Maximum 2.5 gallon/minute showerheads and maximum 1.5 gallon/minute faucet aerators; and

(v) Installation of ceiling fans in living room and each sleeping room.

(H) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 7(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.

(I) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186, Texas Government Code and as further described in Chapter 60 of this title.

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) through (iv) 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) through (iv) of this subparagraph. For Developments involving rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (ii) 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 for each type of residential building and each type of common area building;

(iii) 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; and

(iv) 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. For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 650 square feet or less is considered not more than a one-bedroom Unit, a Unit with 651 to 900 square feet is considered not more than a two-bedroom Unit and a Unit with greater than 900 square feet is considered not more than a three-bedroom Unit; and

(B) A boundary survey of the proposed Development site and of the property purchased. In cases where more property is purchased than the proposed site of the Development, the survey or plat must show the survey calls for both the larger site and the subject site. The survey does not have to be recent; but it must show the property purchased and the property proposed for development. In cases where the site of the Development is only a part of the site being purchased, the depiction or drawing of the Development portion may be professionally compiled and drawn by an architect, engineer or surveyor.

(C) Rehabilitation Developments must submit photographs of the existing signage, typical building elevations and interiors, existing Development amenities, and site work. These photos should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) through (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.

(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.

(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), 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 performed in accordance with §1.36 of this title, Property Condition Assessment Guidelines. For Developments receiving financing from TX-USDA-RHS, a copy of the Housing Quality Standards Checklist prepared by TX-USDA-RHS may be submitted in lieu of the Property Condition Assessment.

(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 $7,500 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) through (D) of this paragraph:

(A) Evidence of site control in the name of 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 individual Persons who are members of the ownership entity of the seller of the proposed site must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) through (iii) of this subparagraph must be provided:

(i) a recorded warranty deed; or

(ii) a contract for sale or 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 at least 90 days, whichever is greater; or

(iii) an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) through (iii) of this subparagraph. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(i) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

(ii) 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 that there is not a zoning requirement; 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. No later than April 1, 2004 (or for Tax Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed), the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that it will recommend approval of appropriate zoning to the entity responsible for final approval of zoning decisions (city council or county commission). If this evidence is not provided on or before April 1, 2004, the Application will be terminated. 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.

(iii) In the case of a rehabilitation Development, if the property is currently a non-conforming use as presently zoned, a letter which discusses the items in subclauses (I) through (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. 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) through (iv) of this subparagraph:

(i) bona fide financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in the name of the Development Owner and/or expressly allows the transfer to the Development Owner; 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. At a minimum, evidence from the lending agency that an application for funding has been made and 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. 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. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will be reevaluated for financial feasibility; if determined to be feasible the Department may proceed with an allocation recommendation; or

(iv) if the Development will be financed through 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 clause (i) of this subparagraph and either of the documents described in clauses (ii) and (iii) of this subparagraph, and satisfying the requirements of clause (iv) of this subparagraph, if applicable:

(i) a copy of the full legal description

(ii) a copy of the current title policy which shows that the ownership (or leasehold) of the land/Development is vested in the exact name of the Development Owner; or

(iii) a copy of a current title commitment with the proposed insured matching exactly the name of the Development Owner and the title of the land/Development vested in the exact name of the seller or lessor as indicated on the sales contract or lease.

(iv) if the title policy or title 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 of all of the notifications described in subparagraphs (A) through (E) of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" statement provided in the Application.

(A) A copy of the public notice published in the most widely circulated newspaper in the area in which the proposed Development will be located. The newspaper must be intended for the general population and may not be a business newspaper or other specialized publication. Such notice must run at least twice within a thirty day period. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located within a Metropolitan Statistical Area the notice must be published in the newspapers of both the Development community and the Metropolitan Statistical Area, unless the local newspaper of the Development community is published at least five times a week in which case the notice need only be published in the local newspaper of the Development community. Developments that involve rehabilitation

and which are already serving low income residents are not required to publish this notice or provide this exhibit.

(B) Evidence of notification meeting the requirements identified in clause (i) of this subparagraph to all of the individuals and entities identified in clause (ii) of this subparagraph. Evidence of such notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity and proof of delivery in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Proof of notification must not be older than three months from the first day of the Application Acceptance Period. 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.

(i) 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 or rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.);

(VI) The total number of Units and total number of low income Units;

(VII) The percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the 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 proposed rents for any market rate Units; and

(IX) The expected completion date if credits are awarded.

(ii) Notification must be sent to all of the following individuals and entities. Officials to be notified are those officials in office at the time the Application is submitted.

(I) City and County Clerks and Neighborhood Organizations. Evidence must be provided that a letter requesting information on neighborhood organizations and meeting the requirements of "Clerk Notification" as outlined in the Application was sent no later than January 15, 2004 to the city clerk and county clerk for the city and county where the Development is proposed to be located. A copy of the reply letter from the city and county clerks must be provided. For urban/exurban areas, all entities identified in the letters from the city and county clerks whose listed address has the same zip code as the zip code for the Development must be provided with written notification, and evidence of that notification must be provided. If any other zip codes exist within a half mile of the Development site, then all entities identified in the letters from the city and county clerks with those adjacent zip codes must also be provided with written notification, and evidence of that notification must be provided. For rural areas, all entities identified in the letters from the city and county clerks whose listed address is within a half mile of the Development site must be provided with written notification, and evidence of that notification must be provided. If the Applicant can provide evidence that the proposed Development is not located within the boundaries of an entity on a list from the clerk(s), then such evidence in lieu of notification may be acceptable. If no reply letter is received from the city or county clerk by February 25, 2004, then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any 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, the Applicant must notify those organizations. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located, the Applicant must attest to that fact.

(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) Presiding officer 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.

(C) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development site prior to the date the Application is submitted. Evidence submitted with the Application must include photographs of the site with the installed sign and invoice receipt confirming installation from the entity that installed the 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. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, 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. If the Applicant chooses to provide this mailed notice in lieu of signage, 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 the option in clause (i) of this subparagraph is used, then evidence must be provided affirming the local zoning notification requirements.

(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.

(D) If any of the Units in the Development are occupied at the time of Application, then the Applicant must post a copy of the public notice in a prominent location at the Development throughout the period of time the Application is under review by the Department. A photograph of this posted notice must be provided with this exhibit. When the Department's public hearing schedule for comment on submitted Applications becomes available, a copy of the schedule must also be posted until such hearings are completed. Compliance with these requirements shall be confirmed during the Department's site inspection.

(E) The Development Owner shall certify to the Department that it shall consider as potential tenants holders of Section 8 vouchers or certificates or other tenants based rental assistance programs.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) through (E) 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.

(B) Each entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has 10% or more 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:

(I) a certificate of reservation of the entity name from the Texas Secretary of State or from the state in which the entity is to be formed if different from Texas; and

(II) executed letter(s) of intent to organize signed by a representative of each organization that is a party to the proposal or a copy of the draft organizational documents for the entity to be formed including Articles of Incorporation, Articles of Organization or Partnership Agreement with a signed notation from a representative of each organization acknowledging intent to organize.

(ii) For existing entities whether formed in or outside of the state of Texas:

(I) 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; and

(II) for entities formed in a state other than Texas a certificate of authority to do business in Texas or an application for a certificate of authority,

(III) 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.

(iii) the Applicant must provide 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. A cover sheet must be placed before the copy of the organizational documents, identifying the relevant document(s) where the evidence of authority to sign is to be found and specifying exactly where the applicable information exists within all relevant documents by page number or by section and subsection if the pages are not numbered.

(C) Evidence that each entity shown on an the organizational chart described in subparagraph (A) of this paragraph that has 10% or more 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. Evidence must be a certification from the Department for each of those Persons required to submit these documents as further described under subsection(e)(3) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification is the appropriate Person appearing in the organizational chart provided in subparagraph (A) of this paragraph.

(D) Evidence that, if the Development Owner or any of its Affiliates shown on the organizational chart described in subparagraph (A) of this paragraph that have 10% or more ownership interest in the Development Owner have, or have had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, that such Persons have submitted the appropriate "National Previous Participation and Background Certification Form" to the Department. Evidence must be a certification from the Department for each of those Persons required to submit these documents as further described under subsection (e)(4) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification is the appropriate Person appearing in the organizational chart provided in subparagraph (A) of this paragraph.

(E) 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 (e)(1) of this section. Applicants must request this certification at least seven 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) through (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 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.

(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. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

(D) Occupied Developments undergoing rehabilitation must also submit the items described in clauses (i) through (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 its 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;

(iii) a relocation plan outlining relocation requirements and a budget with an identified funding source; and

(iv) if applicable, evidence that the relocation plan has been submitted to the appropriate legal agency.

(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, must submit all of the documents described in clauses (i) and (ii) of this subparagraph:

(i) an IRS determination letter which states that the nonprofit organization is a 501(c)(3) or (4) entity; and

(ii) the "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §50.7(b)(1) of this title, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) through (vi) of this subparagraph.

(i) copy of the page from the articles of incorporation or bylaws indicating that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(ii) copy of the page from the articles of incorporation or bylaws indicating 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;

(iii) a Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion, and

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit SetAside and the basis for that opinion. Eligibility is contingent upon the nonprofit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, being the sole General Partner; and otherwise meet the requirements of the Code, §42(h)(5);

(iv) a copy of the nonprofit organization's most recent audited financial statement; and

(v) a certification 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.

(vi) 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 or affiliated with the seller, that will be evaluated in accordance with §1.32(e)(1) of this title, must provide all of the documentation described in subparagraphs (A) through (C) of this paragraph. Applicants applying for acquisition credits must also provide the items described in subparagraph (D) of this paragraph and as provided in the Application.

(A) an appraisal, not more than 6 months old as of the first day of the Application Acceptance Period, which complies with the Uniform Standards of Professional Appraisal Practice and the Department's Market Analysis and Appraisal Policy. For Developments which require an appraisal from TX-USDA-RHS , the appraisal may be more than 6 months old, but not more than 12 months old as of the day the Application Acceptance Period closes and may be provided from TX-USDA-RHS. The appraisal may be submitted as a Supplemental Threshold Report consistent with the timelines and submission documentation requirements identified in paragraph (14)(D) of this subsection. This appraisal of the property must separately state the as-is, pre-acquisition or transfer value of the land and the improvements where applicable;

(B) a valuation report from the county tax appraisal district;

(C) clear identification of the selling Persons, and details of any relationship between the seller and the Applicant or any Affiliation with the Applicant or the Development Owner , Qualified

Market Analyst or any other professional or other consultant performing services with respect to the Development. If any such relationship exists, complete disclosure and documentation of the seller's original acquisition and holding and improvement costs since acquisition, and any and all exit taxes, to justify the proposed sales price must also be provided; and

(D) "Acquisition of Existing Buildings Form."

(13) Evidence of an "Acknowledgement of Receipt of Financial Statement and Authorization to Release Credit Information" must be provided for any Person that has 10% or more ownership interest in the Development Owner or General Partner, the Developer, or Guarantor, as required under subsection (e)(2) of this section. 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 in lieu of submitting the Acknowledgement.

(14) Supplemental Threshold Reports. Documents under subparagraph (A) and (B) of this paragraph must be submitted as further stated in subparagraph (C) and (D) of this paragraph and in accordance with the Market Analysis Rules and Guidelines and Environmental Site Assessment Rules and Guidelines, §§1.33 and 1.35 of this title.

(A) A Phase I Environmental Site Assessment (ESA) on the subject Property, 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 at least 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 reinspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; The ESA must be prepared in accordance with the Department Environmental Site Assessment Rules and Guidelines. Developments whose funds have been obligated by TX-USDA-RHS 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 prepared at the Applicant's expense by a disinterested 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. The Market Analysis must be prepared in accordance with the methodology prescribed in the Market Analysis Rules and Guidelines, §1.33 of this title. In the event that a Market Analysis on the Development is older than 6 months as of 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. The Market Analysis should be prepared for and addressed to the Department. For Applications in the TX-USDA-RHS Set-Aside, the appraisal, required under paragraph (12)(A) of this subsection, will satisfy the requirement for a Market Analysis; no additional Market Analysis is required; however the Department may request additional information as needed.

(i) The Department may determine from time to time that information not required in the Department Market Analysis and Appraisal 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 Qualified Market Analyst to meet this need.

(ii) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the Market Analysis and may substitute its own analysis and underwriting conclusions for those submitted by the Qualified Market Analyst.

(C) 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.

(D) The requirements for each of the reports identified in subparagraphs (A) and (B) of this paragraph can be satisfied in either of the methods identified in clauses (i) or (ii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety as described in subparagraphs (A) and (B) of this paragraph; 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 March 31, 2004. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, March 31, 2004. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form."

(g) Selection Criteria. All Applications will be evaluated and ranking points will be assigned according to the Selection Criteria listed in paragraphs (1) through (18) of this subsection.

(1) Development Financial Feasibility. Applications will receive points based on the supporting financial data provided behind this exhibit in addition to the commitment letter required under subsection (f)(7)(C) of this section. The supporting financial data shall include a thirty year pro forma prepared by the permanent or construction lender specifically identifying each of the first ten years and every fifth year thereafter. The commitment letter must include the anticipated total operating expenses, net operating income and debt service for the first year of stabilized operation as reflected in the pro forma. The pro forma must indicate, and the commitment letter must confirm, that the development pro forma maintains a 1.10 debt coverage ratio throughout the initial thirty years proposed. In addition, the commitment letter must state that the lenders assessment finds that the Development will be feasible for thirty years. Points will be awarded if these criteria are met. No partial points will be awarded. For developments receiving financing from TX-USDA-RHS, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" shall meet the requirements of this section. (28 points).

(2) Quantifiable Community Participation from Neighborhood Organizations. 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.

(A) Receipt of Input. Letters must be received by the Department no later than April 30, 2004, and only, for scoring purposes, directly from neighborhood organizations or with the Application. Letters must be addressed to the Texas Department of Housing and Community Affairs, "Attention: Director of Multifamily Finance Production Division (Neighborhood Input)". Letters received after April 30, 2004 will be summarized and provided for the Board's information and consideration, but will not affect the score for the Application. Separate from scoring, the Department urges all persons and organizations that wish to provide input to the Department to do so well before (and, preferably earlier than ten days before) the day of a Board meeting when a final decision must be made so the input may be carefully considered. Board decisions often cannot be delayed and late input is difficult for the Board and Department to fully consider.

(B) Neighborhood Organizations. For the purposes of the scoring of this exhibit, neighborhood organizations are organizations that are on record with the county or state in which the development is proposed to be located as of March 1 of the application year and that have a primary purpose of working to affect matters related to the welfare of the neighborhood that contains the proposed development site, not including governmental entities.

(C) Scoring of Input. For scoring purposes, each neighborhood organization may submit one letter that represents the organization's input. The letter must identify the specific Development and be signed by the chairman of the board, chief executive office or comparable head of the organization and include the signer's address and phone number. The letter must state and provide documentation which shows that it is from a neighborhood organization; that it is on record with the state or county in which the Development is proposed to be located; and that the organization's boundaries contain the proposed Development site. The letter must also provide the total number of members of the organization and a brief description of the process used to determine the members' position. To be accurately scored, the letter must clearly and concisely state each reason for the organization's support for or opposition to the proposed Development and provide specific evidence supporting that input. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the city and county clerks under subsection (f)(8)(B)(ii)(I) of this section, if the organization provides evidence that the proposed Development site is within the organization's boundaries and that it is on record with the county or state. 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.

(i) Applicants that accurately certify that they do not know of any neighborhood organizations that are on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development, and for which no letters were received, will be awarded the higher of zero points or the average number of points received by all Applications for this exhibit.

(ii) The score for this exhibit will range from a maximum of +12 points to -12 points and the number of points to be allocated to each organization's letter will be determined by the Executive Award and Review Advisory Committee based on the factual basis of the written statements and evidence from the neighborhood organizations. The Department may investigate a matter and contact the Applicant and neighborhood organizations for more information.

(D) Evaluation of Basis of Input. The Department highly values quality public input addressed to the merits of a Development. Input that points out possible errors in the Department's analysis and 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 that evidences unlawful discrimination against classes of persons protected by Fair Housing law will not be considered. To protect the integrity of the Department's processes and decisions, evidence of false statements or misrepresentations from applicant representatives, neighborhood representatives, or other persons will be considered for appropriate action, including possible referral to local district and county attorneys.

(3) Development Location Characteristics. Evidence, not more than 6 months old from the date of the close of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) through (F) of this paragraph. Areas qualifying under any one of the subparagraphs (A) through (F) of this paragraph will receive 5 points. An Application may only receive points under one of the subparagraphs (A) through (F) of this paragraph. An Application may receive an additional ten points pursuant to subparagraph (G) of this paragraph in addition to any points awarded in subparagraphs (A) through (F) of this paragraph.

(A) A geographical area which is:

(i) an Economically Distressed Area; or

(ii) a Colonia, or

(iii) a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD.

(B) a designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 6 months from the first day of the Application Acceptance Period.

(C) a city-sponsored area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. Such Developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed Development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(i) created by the local city council/county commission, and

(ii) targets a specific geographic area which was not created solely for the benefit of the Applicant.

(D) the Development is located in a census tract in 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 MFI for the county in which the census tract is located, as established by HUD. This comparison shall be made using the most recent data available from both sources as of as of October 1 of the year preceding the applicable program year. In those years when the U.S. Census does not publish median family income information at the census tract level, the most recent U.S. Census MFI available for the tract shall be multiplied by the change between HUD's published data for the county MFI as of the year in which the Census MFI was published and the county MFI as of October 1 of 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.

(E) the Development is located in a census tract in which there are no other existing developments supported by housing tax credits.

(F) the Development is located in a county that has received an award as of November 15, 2003, 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.

(G) the Development is located in an incorporated city that is not a Rural Area but has a population no greater than 100,000 based on the most current available information published by the United States Bureau of the Census as of October 1 of the year preceding the applicable program year. The Development can not exceed 100 Units to qualify for these points. (10 points)

(4) Site Location Characteristics. 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 below.

(A) Proximity of site to amenities. Developments located on sites 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 five points. A site located within one-quarter mile of public transportation or located within a community that has "on demand" transportation, 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 Qualified Elderly Development is providing its own specialized van service, then this will be a requirement of the LURA. Only one service of each type listed below will count towards the points. A map must be included identifying the development site and the location of the services, as well as written directions from the site to each service. The services must be identified by name on the map and in the written directions. 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. (5 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) Doctor's offices (medical, dentistry, optometry)

(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments)

(xii) Senior Center (only eligible for Qualified Elderly Developments)

(B) Negative Site Features. 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. Applicants must indicate on a map the location of any negative site feature, with the exception of slope which must be documented with an engineer's certificate to ensure that points are not deducted. 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. (-7 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. Rural Developments funded through TX-USDA-RHS are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of an Interstate Highway including frontage and service roads will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(v) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(vi) Developments located adjacent to or within 100 feet of high voltage transmission power lines will have 1 point deducted from their score.

(5) Housing Needs Characteristics. Each Application, dependent on the city or county where the Development is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The Uniform Housing Needs Scoring Component scores for each city and county will be published in the Reference Manual. (20 points maximum).

(6) Support and Consistency with Local Planning. All documents must not be older than 6 months from the first day of the Application Acceptance Period. Points may be received under any of subparagraphs (A) through (C) of this paragraph.

(A) Evidence from the local municipal authority stating that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document; or a letter from the local municipal authority stating that there is no local plan and that the city supports the Development (3 points).

(B) Evidence that the Applicant has hosted a public meeting to which the neighborhood and other interested persons have been invited. Evidence must include copies of the method of notification used and a transcript of the meeting, as well as a list of meeting attendees. (6 points).

(C) Community Support from Elected Officials. Points will be awarded based on the written statements of support or opposition from local and state elected officials representing constituents

in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support or opposition of the specific Development at the proposed location. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official no later than May 31, 2004. Letters received after May 31, 2004 will be summarized for the Board in the board summary provided by staff, but will not affect the score of the Application. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Points can be awarded for letters of support or opposition as identified in clauses (i) through (iii) of this subparagraph, not to exceed a total of 9 points. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. The Governing Board has directed the Department to request an opinion from the Attorney General on whether recent legislation permits scoring for input from officials other than state officials. If the Attorney General renders an opinion that only input from state officials may be scored, then city and county input will not be scored."

(i) from State of Texas Representative or Senator (support letters are 3 points each, maximum of 6 points; opposition letters are -3 points each, maximum of -6 points); and

(ii) from the Mayor, City Council member for the area, County Judge, County Commissioner for the area, or a resolution from the City Council or County Commission (support letters or resolutions are 3 points each, maximum of 3 points; opposition letters or resolutions are -3 points each, maximum of -3 points).

(7) Development Characteristics. Applications may receive points under as many of the following subparagraphs as are applicable; however to qualify for points under this paragraph, the Development must first meet the minimum requirements identified under subparagraph (A) of this paragraph, unless otherwise provided in the particular subparagraph. This minimum requirement does not apply to Applications involving rehabilitation, Developments receiving funding from TX-USDA-RHS, or Developments proposing single room occupancy.

(A) Unit Size. The square feet of all of the Units in the Development, for each type of Unit, must be at minimum:

(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 two bedroom unit; 750 square feet for an elderly two bedroom unit; and

(iv) 1,000 square feet for a three bedroom unit.

(B) Cost per Square Foot. For this exhibit, costs shall be defined as construction costs, including site work, 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). 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 do not exceed $73 per square foot for Qualified Elderly and Transitional Developments, and $62 for all other Developments. (9 points).

(C) Unit Amenities and Quality. 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) through (xviii) of this subparagraph, not to exceed 12 points in total. Applications involving rehabilitation or proposing single room occupancy will double the points listed for each item, not to exceed 12 points in total.

(i) Covered entries (1 point);

(ii) Nine foot ceilings (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Ceiling fixtures in all rooms (globe with ceiling fan in all bedrooms) (1 point);

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (1 point);

(viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets (1 point);

(ix) Laundry equipment (washers and dryers) in 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 and cementious board products, excluding efis (3 points);

(xiv) Greater than 75% masonry on exterior, which can include stucco and cementious board products, excluding efis (1 points);

(xv) Use of energy efficient alternative construction materials (structurally insulated panels) 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) 12 SEER HVAC or evaporative coolers in dry climates (3 points);

(vxiii) Energy Star or equivalently rated Kitchen Appliances (2 points)

(D) Common Amenities. All Developments, must meet at least the minimum threshold of points to satisfy the Threshold requirement under subsection (f)(4)(A) of this section. To receive additional points for this exhibit, Developments must first provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (iii) of this subparagraph and made available for the benefit of all tenants. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to complete this exhibit.

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) prior to accruing actual points for this exhibit, as follows:

(I) Total Units are less than 40, 3 points are required to meet Threshold;

(II) Total Units are between 40 and 76, 6 points are required to meet Threshold;

(III) Total Units are between 77 and 99, 9 points are required to meet Threshold;

(IV) Total Units are between 100 and 149, 12 points are required to meet Threshold;

(V) Total Units are between 150 and 199, 15 points are required to meet Threshold;

(VI) Total Units are more than 200, 18 points are required to meet Threshold.

(ii) Points for additional amenities. Developments providing additional amenities beyond the threshold identified in clause (i) of this subparagraph will be awarded points based on the point structure below, not to exceed 6 points. The Applicant will total its points for amenities and then subtract the threshold requirement in order to come up with the point total. (For example, a 200-unit Development would have to accumulate 24 points in Common Amenities in order to net a score of 6, but a 36-Unit Development would only have to accumulate 9 points in order to net a score of 6.) Developments proposing rehabilitation or proposing Single Room Occupancy will receive double points for each item. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §50.18(c) of this title 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.

(iii) Amenities for selection include those items listed in subclauses (I) through (XXIII) 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 subsection (f)(4)(D) of this section. 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 with controlled gate access (3 points)

(II) Gazebo w/sitting area (1 point)

(III) Accessible walking path (1 point)

(IV) Community gardens (1 point)

(V) Community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups (1 point);

(VI) Public telephone(s) available to tenants 24 hours a day (2 points);

(VII) A service coordinator office (1 point);

(VIII) Barbecue grills and picnic tables- at least one for every 50 Units (1 point)

(IX) Covered pavilion w/barbecue grills and tables (2 points)

(X) Swimming pool (3 points)

(XI) Furnished fitness center (2 points)

(XII) Equipped Business Center (computer and fax machine) (2 points)

(XIII) Game/TV/Community room (1 point)

(XIV) Library (separate from the community room) (1 point)

(XV) Enclosed sun porch or covered community porch/patio (2 points)

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

(XVII) Senior Activity Room (Arts and Crafts, Health Screening, etc.)- Only Qualified Elderly Developments Eligible (2 points)

(XVIII) Secured Entry (elevator buildings only) - (1 point)

(XIX) Horseshoe or Shuffleboard Court- Only Qualified Elderly Developments Eligible (1 point)

(XX) Community Dining Room w/full or warming kitchen - Only Qualified Elderly Developments Eligible (3 points)

(XXI) Two Children's Playgrounds Equipped for 5 to 12 year olds, two Tot Lots, or one of each - Only Family Developments Eligible (2 points)

(XXII) Sport Court (Tennis, Basketball or Volleyball) - Only Family Developments Eligible (2 points)

(XXIII) Furnished and staffed Children's Activity Center - Only Family Developments Eligible (3 points)

(E) The Development is an existing Residential Development without maximum rent limitations or set-asides for affordable housing and the proposed rehabilitation is part of a community revitalization plan. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the first day of the Application Acceptance Period (4 points).

(F) The Development is a mixed-income Development comprised of both market rate Units and qualified tax credit Units. Points will be awarded to Developments with a Unit based Applicable Fraction which is no greater than:

(i) 80% (8 points); or,

(ii) 85% (6 points); or,

(iii) 90% (4 points); or

(iv) 95% (2 points).

(G) The Development consists of not more than 36 Units and is not a part of, or contiguous to, a larger Development (5 points).

(8) Sponsor Characteristics. Evidence that a HUB, as certified by the Texas Building and Procurement Commission, has an ownership interest in 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 Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period. Evidence will need to be supplemented, either at the time the Application is submitted or at the time a HUB certification renewal is received by the Applicant, confirming that the certification is valid through July 31, 2004 and renewable after that date. (3 points)

(9) Developments Targeting Tenant Populations of Individuals with Children. The Rent Schedule of the Application must show that 30% or more of the Units in the Development have more than 2 bedrooms (1 point).

(10) Development Provides Supportive Services to Tenants. Points may be received under both subparagraphs (A) and (B) of this paragraph.

(A) Applicants will receive points for coordinating their tenant services with those services provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

(B) 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 subparagraph. 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 6 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 one of the services; or

(II) Four points will be awarded for providing two of the services; or

(III) Six points will be awarded for providing three 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, youth programs; scholastic tutoring; social events and activities; senior meal program; home-delivered meal program; community gardens or computer facilities; 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.

(11) Tenant Characteristics- Populations with Special Needs. Evidence that the Development is designed for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist the homeless tenants in locating and retaining permanent housing. For the purpose of this exhibit, homeless persons are individuals or families that lack a fixed, regular, and adequate nighttime residence as more fully defined in 24 CFR, §91.5, as may be amended from time to time. All of the items described in subparagraphs (A) through (E) of this paragraph must be submitted. Points will be awarded consistent with subparagraph (F) of this paragraph:

(A) a detailed narrative describing the type of proposed housing;

(B) a referral agreement, not more than 12 months old from the first day of the Application Acceptance Period, with an established organization which provides services to the homeless;

(C) a marketing plan designed to attract qualified tenants and housing providers;

(D) a list of supportive services; and

(E) adequate additional income source to supplement any anticipated operating and funding gaps

(F) Points will be awarded as follows:

(i) If all Units in the Development are designed solely for transitional housing for homeless persons, 22 points will be awarded; or

(ii) If at least 25% of the Units in the Development are designed for transitional housing for homeless persons, 15 points will be awarded.

(12) Low Income Targeting Points for Serving Residents at 40% and 50% of AMGI (up to 8 points). An Application may qualify for points under subparagraph (C) of this paragraph. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMGI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside Units at the rent-restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA.

(A) No more than 40% of the total number of low income units (including Units at 60% and 30% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50% and 40% AMGI categories. No more than 15% of the total number of low income targeted units will be counted as designated for tenants at 40% of the AMGI for purposes of determining the points in the 40% AMGI categories. For purposes of calculating "Total Low Income Targeted Units" for this exhibit, Units at 30% and 60% of AMGI are also included.

(B) In the table below no Unit may be counted twice in determining point eligibility. Use normal rounding to the hundredth to calculate the percentages, points and "Total Points" for 40% and 50% Units. In calculating the percentages, the denominator includes every low income Unit in the Development, not just the 40% and 50% Units. Normal rounding disregards all digits that are more than one decimal place past the digit rounded; therefore, the thousandths place must not be rounded prior to rounding to the hundredth, e.g. 35.0449% equals 35.04%, not 35.05%. To calculate "Rounded Total Points" disregard the hundredth place in "Total Points" and round normally, eg. 7.50 equals 8 and 7.49 equals 7. The final total points requested must be a whole number consistent with this rounding methodology.

(C) Developments should be scored based on the structure in the table below. Only Developments located in counties whose AMGI is below the statewide AMGI, may use Weight Factor B. All other Applicants are required to use Weight Factor A.
Figure: 10 TAC §50.9(g)(12)(C)

(13) Low Income Targeting Points for Serving Residents at 30% of AMGI (up to 12 points). Applications that propose Units with rents set at 30% AMGI and reserved for occupancy by extremely low-income (those earning annual gross incomes of 30% or less of the AGMI) will be awarded up to 12 points. Developments must have a source of financing for the 30% units. Applicant must submit evidence that the proposed Development has either received development -based rental assistance from a governmental or non-governmental entity, which does not have an identity of interest with the Applicant (with the exception of Applications involving Public Housing Authorities); or received an allocation of funds for on-site Development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from

the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202, HUD Section 811 and HUD Section 8, and must be in the form of a grant or a forgivable loan (with the exception of Applications involving Public Housing Authorities). Points will be determined on a sliding scale based on the percentage of 30% units. The Development must have already applied for funding from the funding entity. Evidence at the application stage shall include a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from TDHCA's HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. In order to qualify for these points, the Applicant must provide a 5 year rental assistance contract for development-based vouchers for each 30% Unit or grant funds of $12,500 per 30% Unit. Use normal rounding.

(A) 3% to 5% of total Development Units at 30% AMGI receives 8 points; or

(B) 6% to 8% of total Development Units at 30% AMGI receives 10 points; or

(C) 9% to 10% of total Development Units at 30% AMGI receives 12 points

(14) Leveraging from local and private resources. An Application may qualify for points under only one of subparagraphs (A) or (B) of this paragraph. However, if an Applicant has requested points under paragraph (13) of this section, the Application is not eligible to receive points under this paragraph. (maximum of 9 points)

(A) Evidence that the proposed Development has received an allocation of funds for on-site development costs from a local unit of government or a nonprofit organization, which is not related to the Applicant. Such funds can include Community Development Block Grant funds, HOPE VI, local HOME (not funded from the Department), a local housing trust, Affordable Housing Program from the Federal Home Loan Bank or Tax Increment Financing, HUD Section 202 , HUD Section 811 and HUD Section 8 and must be in the form of a grant or a forgivable loan. In-kind contributions such as donation of land or waivers of fees such as building permits, water and sewer tap fees, or similar contributions that benefit the Development will be acceptable to qualify for these points. Points will be determined on a sliding scale based on the amount per Unit from outside sources. 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. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from the Department's HOME or Housing Trust Fund sources will qualify under this category. Use normal rounding. No funds from TDHCA's HOME (with the exception of non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. (up to 9 points).

(i) A contribution of $500 to $1,000 per Low Income Unit receives 3 points; or

(ii) A contribution of $1,001 to $3,500 per Low Income Unit receives 6 points; or

(iii) A contribution of $3,501 to $6,000 per Low Income Unit receives 9 points; or

(B) Evidence that the proposed Development is partially funded by development-based Housing Choice or rental assistance vouchers from a governmental or non-governmental entity for a minimum of five years. Such entity cannot have an identity of interest with the Applicant with the exception of Applications involving Public Housing Authorities. Evidence at the time the Application is submitted 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. No later than 14 days before the date of the Board meeting at which staff will make their initial recommendations for credit allocation to the Board, the Applicant or Development Owner must either provide evidence of a commitment for the required financing to the Department or notify the Department that no commitment was received. If the required financing commitment has not been received by that date, the Application will have the points for this item deducted from its final score and will be reevaluated for financial feasibility. No funds from the Department's HOME or Housing Trust Fund sources will qualify under this category. Use normal rounding. (up to 9 points).

(i) Development-Based Vouchers for 3% to 5% of the total Units receives 3 points; or

(ii) Development-Based Vouchers for 6% to 8% of the total Units receives 6 points; or

(iii) Development-Based Vouchers for 9% to 10% of the total Units receives 9 points.

(15) Length of Affordability Period. 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 (3 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (6 points)

(16) 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 (5 points).

(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) through (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) through (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.

(17) Pre-Application Points. Applications which submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph shall receive 7 points. To be eligible for these points, the Application must:

(A) be for the identical site as the proposed Development in the Pre-Application;

(B) have met the Pre-Application Threshold Criteria;

(C) be serving the same target population (family or elderly) as in the Pre-Application in the same Set-Asides; and

(D) 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) and (6)(C) of this subsection. 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 changing 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.

(18) Point Reductions.

(A) Penalties will be imposed on an Application if the Applicant has requested extensions of Department deadlines, and did not meet the original submission deadlines, relating to developments receiving a housing tax credit commitment made in the application round preceding the current round. Extensions that will receive penalties are those extensions related to the submission of the carryover and the closing of the construction loan as identified in §50.21 of this title. For each extension request made, the Applicant will be required to pay a $2,500 extension fee as provided in §50.21(k) of this title and will receive a 2 point deduction for not meeting the Carryover deadline and a 5 point deduction for not meeting the closing of the construction loan deadline. Subsequent extension requests after the first extension request made for each development from the preceding round for these two deadlines will not result in a further point reduction than already described. No penalty points will be deducted for extensions that were requested on developments that involved rehabilitation or in which the Department is the primary lender.

(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 its 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.

(h) 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/Exurban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in paragraphs (1) through (5) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) The number of points awarded for amenities under subsection (g)(7)(C) of this section;

(B) The number of points awarded for amenities under subsection (g)(7)(D) of this section;

(C) The number of rentable square feet per credit amount requested; and

(D) The length of time the Development will be kept affordable.

(E) to give preference to a Development which is located in a QCT as specifically designated by the Secretary of HUD, and which also contributes to a concerted community revitalization plan; and

(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §§50.5(a)(8) and 50.6(f), of this title, 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 lot number issued during the Bond Review Board lottery 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 one of these restrictions, the following determination will be used:

(A) Tax Exempt Bond Developments that have received their reservation from the Bond Review Board prior to April 30, 2004 will take precedence over the Housing Tax Credit Application in the 2004 Application Round; and

(B) Housing Tax Credit Applications in the 2004 Application Round will take precedence over the Tax Exempt Bond Developments that have received their reservation from the Bond Review Board between May 1, 2004 and July 31, 2004; and

(C) After July 31, 2004, a Tax Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2004 Application Round on the Waiting List. However, if no reservation has been issued, then the Waiting List Application will be eligible for its allocation first.

(i) Staff Recommendations. 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 evaluation factors provided in subsection (g) of this section 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.

(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:

(A) the market study;

(B) the proposed location of the Development, including supporting broad geographic dispersion;

(C) the compliance history of the Applicant and/or Developer;

(D) the Applicant and/or Developer's efforts to engage the neighborhood;

(E) the financial feasibility of the Development;

(F) the Development's proposed size and configuration;

(G) the housing needs of the community in which the Development will be located and the needs of the community, area, region and state;

(H) the Development's proximity to other rent restricted developments, including avoiding overconcentration;

(I) the availability of adequate public and private facilities and services;

(J) the anticipated impact on local school districts, giving due consideration to the authorized land use;

(K) laws relating to fair housing including affirmatively furthering fair housing;

(L) the efficient use of the tax credits;

(M) consistency with local needs, including consideration of revitalization or preservation needs;

(N) the allocation of credits among many different entities without diminishing the quality of the housing;

(O) meeting a compelling housing need;

(P) providing integrated, affordable housing for individuals and families with different levels of income;

(Q) any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code; or

(R) 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.

(b) Waiting List. 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 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 Developments from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). 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 TX-USDA-RHS Developments which are experiencing foreclosure or loan acceleration at any time during the 2004 calendar year.

(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 anticipated commitment rather than in the calendar year of the forward commitment.

(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 seven business 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.

(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:

(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) through (viii) of this subparagraph.

(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. If the presiding officer of the governing body expresses opposition to the Development, the Department will give consideration to the objections raised and will visit the proposed site or Development within 30 days of notification to conduct a physical inspection of the Development site and consult with the presiding officer of the governing body before the Application is scored, if opposition is received prior to scoring being completed. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate;

(iii) 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;

(iv) state representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator hold a community meeting, the Department shall provide appropriate representation.

(v) United States representative who represents the community containing the Development;

(vi) Superintendent of the school district containing the Development;

(vii) Presiding officer of the board of trustees of the school district containing the Development;

(viii) 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, based on the letters obtained by the Applicant from the city and county clerks under §50.9(f) of this title or otherwise known to the Applicant or Department and on record with the state or county.

(ix) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing.

(C) 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.

(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.

(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.

(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.

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed, the Department will:

(A) provide the Application scores to the Board;

(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 §50.20(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application.

(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.

(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, Texas Government Code.

§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 2004 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 60 days after the date of the TBRB lottery.

Such filing must be accompanied by the Application fee described in §50.21 of this title.

(2) Applicants which receive advance notice of a Program Year 2004 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 §50.21 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Any outstanding documentation required under this section 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.

(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 title (regarding State Housing Credit Ceiling), §50.7 of this title (regarding Regional Allocation and Set-Asides), §50.8 of this title (regarding Pre-Application), §50.9(d)(2) and (4) of this title (regarding Selection Criteria Review and Prioritization), §50.9(g) of this title (regarding Selection Criteria), §50.10(b) and (c) of this title (regarding Waiting List and Forward Commitments), and §50.14 of this title (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(f) of this title. 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. At the time of Application, Developments must demonstrate the Development's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan. 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(a) of this title.

(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. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) through (3) of this subsection include:

(1) the services must be in at least one of the following categories: 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, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or

(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 the 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, and upon approval by the Board.

(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 title 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).

§50.13. Commitment and Determination Notices; Agreement and Election Statement.

(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 at §50.17 of this title, 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 §50.21 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting an extension request and associated extension fee as described in §50.21 of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(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 at §50.12 of this title and compliance by the Development Owner with all applicable requirements of this title 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 §50.21 of this title. 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 any Development in violation of the calculation relating to the inclusive capture rate as restricted under §1.32(g)(2) of this title, unless The Committee makes a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this chapter, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(6) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General 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 funded by the Department, or outside the state of Texas, that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property as of June 30 of each year (or for Tax Exempt Bond Developments as of 10 business days prior to the Board's vote to allocate credits. Any corrective action documentation affecting the Material Non-Compliance status score for Applicants must be received by the Department no later than May 15 of each year (or for Tax Exempt Bond Developments no later than 20 business days prior to the Board's vote to allocate credits).

(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.

§50.14. Carryover, 10% Test.

(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. Developments involving acquisition/rehabilitation must submit the Carryover documentation to the Department no later than December 1 of the year in which the Commitment Notice is issued, however they will be ineligible for extensions beyond that date. 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 must have purchased the property for the Development.

(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) A review of information provided by the IRS as permitted pursuant to IRS Form 8821, Tax Information Authorization, for the release of tax information relating to non-disclosure or recapture issues. Each Development Owner, General Partner and Principal must execute and provide to the Department Form 8821 within ten business days of the issuance of a Commitment Notice or Determination Notice. Any information provided by the IRS will be evaluated by the Department 50 and may be utilized by the Board to determine if a Carryover Allocation will be made.

(4) Attendance of the Development Owner and Development architect at eight hours of Fair Housing training on or before the closing of the construction loan.

(5) For all Developments involving new construction, 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.

(6) Development Owners must provide evidence to the Department that they have notified the District office of the Texas Department of Transportation of their proposed property consistent with the template provided in the Carryover Allocation Procedures Manual.

(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.

§50.15. Closing of the Construction Loan, Commencement of Substantial Construction.

(a) Closing of the Construction Loan. The Development Owner must submit evidence of having closed the construction loan. The evidence must be submitted no later than June 1 of the year after the execution of the Carryover Allocation Document, and no later than 14 days after the closing of the construction loan for Tax Exempt Bond Developments, with the possibility of an extension as described in §50.21 of this title. 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. The Carryover Allocation will automatically be terminated if the Development Owner fails to meet the aforementioned closing deadline (taking into account any extensions), and has not had an extension approved, and all credits previously allocated to that Development will be recovered and become a part of the State Housing Credit Ceiling for the applicable year. Owners of Tax Exempt Bond Developments will be fined $2,500 if this requirement is not fulfilled.

(b) Commencement of Substantial Construction. The Development Owner must submit evidence of having commenced and continued substantial construction activities. 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 §50.21 of this title. The minimum activity necessary to meet the requirement of substantial construction for new Developments will be defined as having expended 10% of the construction contract amount for the Development, adjusted for any change orders, and as documented by both the most recent construction contract application for payment and the inspecting architect. The minimum activity necessary to meet the requirement of substantial construction for rehabilitation Developments will be defined as having expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

§50.16. Cost Certification, LURA.

(a) Cost Certification. If a Carryover Allocation was not requested and received, Developments must be placed in service by December 31 of the year the Commitment Notice was issued. Developments receiving a Carryover Allocation must be placed in service by December 31 of the second year following the year the Carryover Allocation Agreement was executed. Developments requesting IRS Forms 8609 must submit the required Cost Certification documentation no later than April 1 of the year following the date the buildings were placed in service. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this time will be reported to the IRS. The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt of the Cost Certification documentation and notify the Owner in a deficiency letter of all additional required documentation. Once the Department has determined that all required documents have been received, the Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of those final documents. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator.

(b) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than September 1 of the first year in which credits will be claimed. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution by December 1 of the first year in which credits will be claimed. In addition, the initial compliance and monitoring fee must also be submitted to the Department by December 1 of that same year. After receipt of the signed LURA from the Department, the Development Owner shall then record said 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 representatives, 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.

§50.17. 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 housing 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. 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 Seventy-fifth Legislature. 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(f)(4)(H) of this title, 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 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 §50.18(c) of this title. 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 §50.21 of this title 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 accredited accessibility inspector 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 housing 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.

(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 required plans and specifications. At a minimum, all Development inspections must 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 §50.21 of this title. For properties receiving financing through TX-USDA-RHS, the Department shall accept the inspections performed by TX-USDA-RHS in lieu of having other Third party Inspections.

(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 §50.16 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. The Department may also consider an amendment to a Commitment Notice or Carryover Allocation or other requirement with respect to a Development if the revisions:

(1) are consistent with the Code and the Housing Tax Credit Program;

(2) do not occur while the Development is under consideration for tax credits;

(3) do not involve a change in the number of points scored (unless the Development's ranking is adjusted because of such change);

(4) do not involve a change in the Development's site; or

(5) do not involve a change in the set-aside election.

§50.18. Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Sale of Tax Credit Properties, Withdrawals, Cancellations.

(a) Board Reevaluation. 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 (c)(3) 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. An Applicant may appeal decisions made by the Department.

(1) The decisions that may be appealed are identified in subparagraphs (A) through (C) 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 title. 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.

(c) Amendment of Application Subsequent to Allocation by Board.

(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 §50.19 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment.

(3) For Applications approved by the Board prior to September 1, 2001, the Executive Director will approve or deny the amendment request. For Applications approved by the Board after September 1, 2001, the Board must vote on whether to approve the 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 three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent;

(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.

(d) Housing Tax Credit and Ownership Transfers. 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. 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. 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 and specifically disclose if the transfer is requested because a Person active in the Development is being, or has been, removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement. 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.

(e) 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, 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;

(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(g) of this title, 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. Section 42(i)(7)), and the Department declines to purchase the Development.

(f) 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.

(g) 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 title 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.

(h) 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 and nonbinding arbitration. 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 process, the person may send a proposal to the Department's General Counsel and Dispute Resolution Coordinator. The proposal should describe the dispute and the details of the process proposed (including proposed participants, third party, when, where, procedure, and cost). The Department will evaluate whether the proposed process would fairly, expeditiously, and efficiently assist in resolving the dispute and promptly respond to the proposal.

§50.19. Compliance Monitoring and Material Non-Compliance.

(a) 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 are set forth in Department Rule §60.1 of this title, and in the Owner's Compliance Manual prepared by the Department's Compliance Division, as amended from time to time. Such procedure only addresses forms and records that may be required by the Department to enable the Department to monitor a Development for violations of the Code and the LURA and to notify the IRS of any such non-compliance. This procedure does not address forms and other records that may be required of Development Owners by the IRS more generally, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS audit.

(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction or rehabilitation phase associated with any Development under this title. The Department will monitor under this requirement by requiring a copy of reports from all construction inspections performed for the lender and/or syndicator for the Development. Those reports must indicate that the Department may rely on those reports. The Department may provide those inspectors for the lender and/or syndicator with required documentation to be completed that will confirm satisfaction of the requirements of this rule. If necessary, the Department may obtain a Third Party inspection report for purposes of monitoring. The Development Owner must provide the Department with copies of all inspections made throughout the construction of the Development within fifteen days of the date the inspection occurred. The Department, or any Third Party inspector hired by the Department, shall be provided, upon request, any construction documents, plans or specifications for the Development to perform these inspections. If reports are not submitted to the Department or can not be relied upon, the Applicant will be responsible for payment of any necessary inspections. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from TX-USDA-RHS will be exempt from these inspections, provided that the Development Owner provides the Department with copies of all inspections made by TX-USDA-RHS throughout the construction of the Development within fifteen days of the date the inspection occurred.

(c) The Department will monitor compliance with all representations made by the Development Owner in the Application and in the LURA, whether required by the Code, Treasury Regulations or other rulings of the IRS, or undertaken by the Development Owner in response to Department requirements or criteria.

(d) The Development Owner must collect information and retain records for each qualified low income building in the Development, on a monthly basis (with respect to the first year of a building's Credit Period and on an annual basis, thereafter in accordance with IRS Regulation §§1.42-5(b)(1) and (2)).

(e) The Development Owner will deliver to the Department no later than the last day in April each year, the current audited financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Development for the prior year.

(f) Specifically, to evidence compliance with the requirements of the Code, §42(h)(6)(B)(iv) which requires that the LURA prohibit Development Owners of all tax credit Developments placed in service after August 10, 1993 from refusing to lease to persons holding Section 8 vouchers or certificates because of their status as holders of such Section 8 voucher or certificate. Development Owners must comply with Department rules under 10 TAC §1.14 of this title.

(g) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Development Owner of a completed Development the Fair Housing Sponsor Report (form provided by the Department) to be completed by the Development Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Development for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Development Owner, will be considered not in compliance with the provisions of §42 of the Code and reported to the IRS on Form 8823, Low Income Housing Credit Agencies Report of Non Compliance. The Fair Housing Sponsor Report, Part A "Owner's Certification of Program Compliance" shall cover the preceding calendar year and shall at a minimum cover the requirements under IRS Regulation 1.42-5(c) and §60.1 of this title.

(2) Review.

(A) The Department staff will review the Fair Housing Sponsor Report for compliance with the requirements of the Code, §42.

(B) The Department will monitor the Development for compliance under Section 42 and §60.1 of this title.

(C) The Department will perform on-site inspections of all buildings in each low income Development by the end of the second calendar year following the year the last building in the Development is placed in service and, for at least 20% of the low income Units in each Development, inspect the Units and review the low income certifications, the documentation the Development Owner has received to support the certifications, the rent records for each low income tenant in those Units, and any additional information that the Department deems necessary.

(D) At least once every three years, the Department will conduct on-site inspections of all buildings in the Development, and for at least 20% of the Development's low income Units, inspect the Units

and review the low income certifications, the documentation supporting the certifications, and the rent records for the tenants in those Units.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TX-USDA-RHS, whereby the TX-USDA-RHS agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TX-USDA-RHS under its §515 program. Owners of such buildings may be excepted from the review procedures of subparagraph (B) or (C) of paragraph (2) of this subsection or both; however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Development Owner must provide the Department with additional information. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TX-USDA-RHS , which includes persons with disabilities.

(h) Inspection provision. The Department retains the right to perform an on site inspection of any low income Development including all books and records pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later. An inspection under this subsection may be in addition to any review under subsection (g)(2)(C) of this section.

(i) Inspection Standard. For the on-site inspections of buildings and low income Units, the Department shall review any local health, safety, or building code violations reported to, or notices of such violations provided by the Development Owner, and determine whether the Units satisfy local health, safety, and building codes or the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety and building codes. Developments must continue to satisfy these codes and if the Department becomes aware of any violation of these codes, the violations must be reported to the IRS.

(j) The Department retains the right to require the Owner to submit tenant data in the electronic format as developed by the Department. The Department will provide general instruction regarding the electronic transfer of data.

(k) Notices to Owner. The Department will provide prompt written notice to the Development Owner if the Department does not receive the certification described in subsection (g)(1) of this section or discovers through audit, inspection, review or any other manner, that the Development is not in compliance with the provisions of the Code, §42 or the LURA. The notice will specify a correction period which will not exceed 90 days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months from the date of notice to the Development Owner if it determines there is good cause for granting an extension. If any communication to the Development Owner under this section is returned to the Department as unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner.

(l) Notice to the IRS.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department), but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the non-compliance or failure to certify.

(2) If a particular instance of non-compliance is not corrected within three years after the end of the permitted correction period, the Department is not required to report any subsequent correction to the IRS.

(3) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in this section for three years from the end of the calendar year the Department receives the certifications and records.

(m) Notices to the Department. A Development Owner must comply with §50.18(d) of this title for the event listed in paragraph (1) of this subsection and must notify the division responsible for compliance within the Department in writing of the events listed in paragraphs (2) and (3) of this subsection.

(1) prior to any sale, transfer, exchange, or renaming of the Development or any portion of the Development. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development;

(2) any change of address to which subsequent notices or communications shall be sent; or

(3) within thirty days of the placement in service of each building, the Department must be provided the in service date of each building.

(n) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the Development Owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner including the Development Owner's noncompliance with the Code, §42.

(o) These provisions apply to all buildings for which a housing tax credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Development was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the IRS in a manner consistent with subsection (j) of this section.

(p) Material Non-Compliance. In accordance with §50.5(b)(3) and (4) of this title, the Department will disqualify an Application for funding if the Applicant, the Development Owner, or the General 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 located in or outside the State of Texas is determined by the Department to be in Material Non-Compliance on the date the Application Round closes. The Department will classify a property as being in Material Non-Compliance when such property has a Non-Compliance score that is equal to or exceeds 30 points in accordance with the methodology and point system set forth in this subsection, or if in accordance with §50.5(b)(4) of this title, the Department makes a determination that the non-compliance reported would equal or exceed a non-compliance score of 30 points if measured in accordance with the methodology and point system set forth in §60.1 of this title.

(q) Utility Allowances utilized during affordability period. The Department will monitor to determine whether rents comply with the published tax credit rent limits using the utility allowances established by the local housing authority. If there is more than one entity (Section 8 administrator, public housing authority) responsible

for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

§50.20. 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. 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) through (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, the original of each completed (as to Part I) IRS Form 8609, a copy 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 delivered to the Development Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence in this subsection. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a Housing Credit Allocation is made as provided in this section. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§50.21. Program Fees, Refunds, Public Information Requests, Amendments of Fees and Notification of Fees, Extensions.

(a) Timely Payment of Fees. All fees must be paid 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 $5 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.

(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 $15 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $20 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 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 Application fee.

(d) Refunds of Pre-Application or Application Fees. 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 Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 30% of the review, the site visit will constitute 45% of the review, and Threshold and Selection review will constitute 25% of the review. The Department must provide the refund to the Applicant not later than the 30th day after the date the last official action is taken with respect to the Application.

(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)(4) of this title 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 notice, a non-refundable commitment fee equal to 4% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check.

(g) Compliance Monitoring Fee. Upon the Development being placed in service, the Development Owner will pay a compliance monitoring fee in the form of a check equal to $25 per tax credit Unit per year or $100, whichever is greater. Payment of the first year's compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Development. Subsequent anniversary dates on which compliance monitoring fee payments are due shall be determined by the date the Development was 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. 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.

(i) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Texas Building and Procurement Commission (formerly General Services Commission) determines the cost of copying, and other costs of production.

(j) Periodic Adjustment of Fees by the Department and Notification of Fees. 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.

(k) Extension Requests. All extension requests relating to the Commitment Notice, Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department at least 20 days prior to the date for which an extension is being requested and will not be accepted any later than this deadline date. 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 except for the Closing of Construction Loan and Substantial Construction Commencement. The Board may grant extensions, for the Closing of Construction Loan and Substantial Construction Commencement. The Board may waive related fees for good cause.

§50.22. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department will 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 507 Sabine, Suite 400, Austin, Texas 78701. 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.

§50.23. 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) The Department may amend this chapter and the Rules contained herein at any time in accordance with Chapters 2001 and 2003, Texas Government Code, as may be amended from time to time.

§50.24. Deadlines for Allocation of Housing Tax Credits.

(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.

(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. 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 December 15, 2003.

TRD-200308587
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: August 29, 2003
For further information, please call: (512) 475-4595

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER HH. COMMISSIONER'S RULES CONCERNING CLASSROOM SUPPLY REIMBURSEMENT PROGRAM

19 TAC §61.1081

The Texas Education Agency (TEA) adopts new §61.1081, concerning the classroom supply reimbursement program, with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7557). The new section establishes a program whereby classroom teachers may be reimbursed for personal expenditures made for classroom supplies.

House Bill 1844, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §21.413, that establishes a program whereby classroom teachers may be reimbursed for personal expenditures made for classroom supplies. The legislation requires that the commissioner of education establish the reimbursement program and adopt rules for the local allocation of funds. A school district must match any funds provided to the district under the program with local funds and the funds used to match may not replace local funds. Teachers may use the funds at their discretion, as long as the use is of benefit to the district's students.

The adopted new 19 TAC §61.1081 implements the new legislation by establishing the process for districts to apply for these funds, the eligibility requirements for district participation, and the criteria by which TEA will evaluate district applications. The new rule also addresses other provisions such as district compliance, disputes about allowable teacher expenditures, district ownership of durable goods, and the timeline for expenditure of funds for each school year.

In response to comments, the following changes have been made to the section since published as proposed.

Language was revised in subsection (a)(2) to reduce the amount of information required from districts regarding past expenditures on reimbursements to teachers for classroom supplies.

Language was deleted in subsection (c)(1) to remove the provision that preference be given to districts with pre-existing teacher supply reimbursement programs.

Language was deleted in subsection (c) to remove the provision that the number of children participating in the free and reduced price lunch program would serve as a criterion for determining which districts received a grant for supply reimbursements.

Language was added in subsection (d)(3) to clarify that teachers may not be required by local districts to pool supply monies for reimbursement purposes.

Language was added in subsection (e)(1) to clarify that local decisions regarding teacher supply reimbursements in possible violation of state law are appealable to the commissioner as provided by TEC, §7.057.

The following comments were received regarding adoption of the new section.

Comment. A representative of Henrietta Independent School District (ISD) stated that subsection (a)(2), which requires that five years of previous teacher supply reimbursements by districts be submitted, is an onerous requirement.

Agency response. The agency agrees with the comment and has modified the rule to require the submission of only one year of past expenditures on teacher supply reimbursements prior to the 2003-2004 school year, two years prior to the 2004-2005 school year, and three years for all school years thereafter. Statute requires that monies from the Teacher Supply Reimbursement Grant Program not supplant local funds that have been used to reimburse teachers for classroom supplies.

Comment. A representative of the Texas Classroom Teachers Association objected to a provision in subsection (c)(1) that priority will be given to districts that have pre-existing supply reimbursement programs.

Agency response. The agency agrees with the comment and has modified the section to delete the preference for pre-existing teacher supply reimbursement programs.

Comment. A representative of Henrietta ISD objected that subsection (c)(4) might result in priority being given to school districts with large numbers of children in the free and reduced price lunch program even though funding levels across districts are substantially equalized.

Agency response. The agency agrees with the comment since statute does not imply that such priority should be given and has modified subsection (c) to omit the language.

Comment. A representative of the Texas Classroom Teachers Association asked that subsection (d)(3), which allows teachers to pool their respective supply monies, be clarified so that teachers may not be required to pool such monies.

Agency response. The agency agrees with the comment and has modified the section to provide that teachers may not be required by districts to pool their respective supply monies.

Comment. A representative of the Texas Classroom Teachers Association objected to subsection (e)(1), which precludes appeals to the commissioner over local board decisions regarding reimbursements under the Teacher Supply Reimbursement Grant Program in general, citing in particular TEC, §7.057.

Agency response. The agency agrees with the comment regarding TEC, §7.057, and has modified subsection (e)(1) to clarify that local board decisions that potentially violate state statute are appealable. Other disputes, however, will remain unappealable.

Comment. A representative of Henrietta ISD offered that 19 TAC §61.1081 might violate the state's competitive bidding requirement in large school districts where more than $25,000 might be expended by teachers on classroom supplies.

Agency response. The agency disagrees with the comment since individual teachers are not likely to purchase more than $25,000 in classroom supplies and since school districts would not corporately determine the specific supplies to be purchased or from where they would be purchased. In addition, the statute on which 19 TAC §61.1081 is based clearly does not contemplate that the program would be limited only to relatively small school districts.

The new section is adopted under the Texas Education Code (TEC), §21.413, which authorizes the commissioner of education to adopt rules and establish a reimbursement program under which the commissioner provides funds to a school district for the purpose of reimbursing classroom teachers in the district who expend personal funds on classroom supplies.

The new section implements the TEC, §21.413.

§61.1081. Teacher Supply Reimbursement Grant Program.

(a) Application process. In order to participate in the classroom supply reimbursement program authorized by Texas Education Code (TEC), §21.413, a school district must apply to the Texas Education Agency (TEA) for these funds by a date set by the commissioner of education. The application must include the following:

(1) a standard Teacher Supply Reimbursement Grant Program district application;

(2) actual total local fund expenditures on teacher supply reimbursements for school year 2003 if applying during school year 2004, for school years 2003 and 2004 if applying during school year 2005, and for the most recent three school years if applying after school year 2005 (to aid in determining if local expenditures are being reduced). Local funds are all funds over which the district exercises control or approval authority used to reimburse teachers for tangible items of direct benefit to students;

(3) the number of teachers who have received reimbursement for supply purchases in the last five years;

(4) the number of teachers anticipated to receive reimbursement under this program and the amount each teacher will be eligible to receive; and

(5) a district policy that would ensure each teacher meets the requirement that an expenditure will benefit students.

(b) Eligibility requirements. To be eligible to participate in the classroom supply reimbursement program, a district will be required to:

(1) re-apply to participate each year;

(2) create a Teacher Supply Reimbursement Grant account separate from other accounts to which the grant shall be deposited and account for funds in accordance with applicable state and federal requirements;

(3) deposit in the designated account an amount of local funds defined in subsection (a)(2) of this section at least equal to the greater of the amount of the grant or the previous year's expenditure on teacher supply reimbursements. Individual reimbursements from the Teacher Supply Reimbursement Grant must be matched with an equal amount of local funds;

(4) ensure that items purchased with funds in the designated account are tangible items, of direct benefit to students;

(5) retain ownership of all durable goods purchased under this program. A district may develop a policy allowing each teacher to retain ownership of goods of nominal value purchased with grant money;

(6) retain receipts obtained from teachers for reimbursement and make these records available for audit purposes; and

(7) return unexpended Teacher Supply Reimbursement Grant balances at the end of the state fiscal year for which they were awarded.

(c) Evaluation criteria. Applications to the TEA will be evaluated on the following criteria:

(1) information about a district's existing supply reimbursement program, if applicable;

(2) the balance between the number of teachers receiving reimbursements and the size of the reimbursements;

(3) the process by which a district would determine whether an expenditure meets the student benefit criteria as required in subsection (a)(5) of this section; and

(4) the district's size relative to other applicants.

(d) Other provisions.

(1) A district found in noncompliance with the provisions specified in this section must reimburse the state for funds unaccounted for or used for purposes not meeting the requirements in TEC, §21.413.

(2) A district found to have reduced its local expenditures may be required to refund the entire grant to the state.

(3) A district may allow, but not require, teachers to pool their respective supply monies for the purchase of an item, as long as the item meets the student benefit criteria established by the district.

(4) Funds for each school year must be expended by July 31 of that school year.

(5) Total reimbursement to an individual teacher in a single year from the Teacher Supply Reimbursement Grant may not exceed $200. Reimbursements from local funds may exceed the matching requirement in subsection (b)(3) of this section.

(6) The reimbursement program may be implemented only if funds are specifically appropriated by the legislature for the program or if the commissioner identifies available funds, other than general revenue funds, that may be used for the program.

(e) Dispute resolution.

(1) A determination by the local school district board of trustees of any dispute involving teacher reimbursement is final and may not be appealed to the TEA, except as provided by TEC, §7.057. Nothing in this provision precludes the TEA from recovering funds from a district pursuant to an audit.

(2) A determination by the TEA in the administration of this program is final and may not be appealed.

(f) Expiration date. This section, issued under TEC, §21.413, expires September 1, 2007.

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 December 15, 2003.

TRD-200308570
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: January 4, 2004
Proposal publication date: September 5, 2003
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 226. PATIENT SAFETY PILOT PROGRAMS ON NURSE REPORTING SYSTEMS

22 TAC §§226.1 - 226.7

The Board of Nurse Examiners for the State of Texas (BNE or Board) adopts without changes a new Chapter 226, §§226.1 - 226.7, pertaining to Patient Safety Pilot Programs on Nurse Reporting Systems. On September 1, 2003, §301.1605 and §301.1606 were added to the Texas Occupations Code pursuant to Senate Bill 718 of the 78th Texas Legislature, Regular Session. This new chapter was originally proposed in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9677).

New §301.1605 and §301.1606 of the Occupations Code authorize the Board of Nurse Examiners to approve and adopt rules regarding pilot programs for innovative applications in the practice of and including the regulation of professional nursing. Pursuant to §301.1606, approval of a pilot study would allow for an exception to the mandatory reporting requirements of §§301.401-301.409 or to a rule adopted pursuant thereto provided the pilot study provides an equivalent methodology for assuring public safety.

In 1999, the Institute of Medicine (IOM) published "To Err is Human," a report that focused on patient safety and medical errors. The IOM findings were alarming. The IOM reported that medical errors contribute to somewhere between 44,000 to 98,000 deaths per year. This range was defined by reviewing patient admission statistics in hospitals in the United States for the year 1997. These deaths exceeded the annual death rate for motor vehicle accidents, breast cancer and AIDs. The report formulated specific recommendations that focus on improving safety systems in health care organizations, including medication safety systems. Among those recommendations were the establishment of a national center for patient safety, development and implementation of a nationwide mandatory reporting system, encouragement of voluntary reporting, utilization of peer review mechanisms and disclosure of adverse events to the public, where confidentiality is not compromised.

Since the publication of the IOM report there has been an attempt to move away from punitive action related to medical (including nursing) errors, especially medication-related errors, has occurred at the national and federal levels. CMS (formerly HCFA) and the Joint Commission on Accreditation of Hospitals and Organizations (JCAHO) have both made major shifts and revisions to their monitoring criteria to encourage greater reporting of errors without fear of punitive action. The underlying concept is that the greater a facility's awareness of errors, including "near misses," the better systems can be examined and improved to prevent future errors and client injury.

No comments were received in response to the proposal for adoption of this new chapter.

The adoption of Chapter 226 is under the authority of the Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the NPA. The adoption of the new rules affect the Nursing Practice Act, Texas Occupations Code §301.1605 and §301.1606 as they pertain to pilot 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 December 9, 2003.

TRD-200308455
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: December 29, 2003
Proposal publication date: November 7, 2003
For further information, please call: (512) 305-6823

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.23

The Texas Board of Professional Geoscientists ("Board") adopts an amendment to §851.23, regarding the granting of credit by the Board for full-time graduate study in the discipline of geoscience of the Texas Geoscience Practice Act without changes to the text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6206) and will not be republished.

The amendment is necessary to implement Senate Bill 405, Acts of the 77th Texas Legislature, and to establish procedures and requirements necessary for the licensing of professional geoscientists by the Texas Board of Professional Geoscientists. The

amended rule will provide the mechanisms to license professional geoscientists under the mandate of Senate Bill 405.

The Department drafted and distributed the proposed amended rule to persons internal and external to the agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Senate Bill 405, 77th Texas Legislature, which authorizes the Board to adopt and enforce rules consistent with the Act and necessary for the performance of its duties.

The statute affected by the adoption is Senate Bill 405, 77th Texas Legislature and the code sections in which it may be codified. No other statutes, articles, or codes are affected by the adoption.

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 December 11, 2003.

TRD-200308538
Michael D. Hess
Executive Director
Texas Board of Professional Geoscientists
Effective date: December 31, 2003
Proposal publication date: August 8, 2003
For further information, please call: (512) 936-4402

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 405. CLIENT (PATIENT) CARE
SUBCHAPTER F. VOLUNTARY AND INVOLUNTARY BEHAVIORAL INTERVENTIONS IN MENTAL HEALTH PROGRAMS

25 TAC §§405.121 - 405.134

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeals of §§405.121 - 405.134 of Chapter 405, Subchapter F, governing voluntary and involuntary behavioral interventions in mental health programs without changes to the proposed text published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5734). New §§415.251 - 415.257, 415.261 - 415.274, 415.285, 415.290 - 415.292, and 415.299 - 415.300 of new Chapter 415, Subchapter F, governing interventions in mental health programs, replace the repealed sections and are contemporaneously adopted in this issue of the *Texas Register*.

The repeals allow for the adoption of new and more current sections governing the same matters.

No public comments were received concerning the proposed repeals.

These repeals are adopted under the Texas Health and Safety Code (THSC), §532.015(a), which provides the TDMHMR Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in a private mental health facility, community-based crisis stabilization and crisis residential services; THSC §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC §576.024, concerning use of physical restraint.

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 December 11, 2003.

TRD-200308525
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
Proposal publication date: July 25, 2003
For further information, please call: (512) 206-4516

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CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES
SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS
DIVISION 2. ORGANIZATIONAL STANDARDS

25 TAC §412.308

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts an amendment to §412.308, concerning environment of care and safety, of Chapter 412, Subchapter G, concerning mental health community services standards, without changes to the proposed text published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5772).

The amendment to §412.308 updates the section to delete references to Chapter 405, Subchapter F, governing voluntary and involuntary behavioral interventions in mental health programs. The amended section includes the citation of new sections governing the same matters in Chapter 415, Subchapter F, governing interventions in mental health programs. The repeals and the new sections governing restraint are contemporaneously adopted with the adoption of the amendment in this issue of the *Texas Register*.

No public comments were received concerning the proposed amendment.

The amendment is adopted under Texas Health and Safety Code (THSC), §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

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 December 11, 2003.

TRD-200308526
Rodolfo Arredondo
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: January 1, 2004
Proposal publication date: July 25, 2003
For further information, please call: (512) 206-4516

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CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES
SUBCHAPTER F. INTERVENTIONS IN MENTAL HEALTH PROGRAMS

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§415.251 - 415.257, 415.261 - 415.274, 415.285, 415.290 - 415.292, 415.299, 415.300 of new Chapter 415, Subchapter F, governing interventions in mental health programs. Sections 415.253, 415.254, 415.256, 415.257, 415.261, 415.263, 415.264, 415.266, 415.268, 415.271, 415.273, 415.274 and 415.292 are adopted with changes to the proposed text published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5575). Sections 415.251, 415.252, 415.255, 415.265, 411.267, 415.269, 415.270, 415.272, 415.285, 415.290, 415.291, 415.299, and 415.300 are adopted without changes to the proposed text published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5573) and will not be republished. Section 415.262, published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8802) is adopted with changes. The sections are adopted contemporaneously with the adoption of the repeals of sections in Chapter 405, Subchapter F, governing voluntary and involuntary behavioral interventions, which the new subchapter replaces.

The new sections provide updated requirements governing restraint, seclusion, clinical timeout, and quiet time, and distinguish restraint and seclusion as they are used in medical, dental, and surgical procedures from their use in emergency situations.

In §415.253, the definition of "Psychiatric-mental health nurse practitioner (PMHNP) or psychiatric-mental health clinical nurse specialist (PMH-CNS)" has been deleted and replaced with a definition of "advanced practice nurse." Throughout the subchapter the term "advanced practice nurse" was substituted for the deleted term. Definitions (1) through (20) have been renumbered. Section 415.254(g) has been revised to clarify that the use or restraint or seclusion either solely as a behavior therapy program or as part of a behavior therapy program is prohibited. Section 415.256(d) has been revised to stipulate that the requirement for a physician's clinical justification to be documented for the use of more than one type of restraint, restraint device, or restraint and seclusion is specific to restraint and seclusion used in a behavioral emergency. The detail in §415.257(c)(4)(A)-(D) was shortened by more broadly referencing requirements in terms of certification by the American Red Cross or the American Heart Association. Subsections (d) and (e) were revised to delete requirements for ongoing training and to require instead the demonstration of ongoing competence or, as necessary, retraining. Subsection (e)(1) was revised to delete the requirement for staff unsupervised by clinical personnel to monitor cardiac status. Section 415.261(a)(11) was changed so that the use of restraint or seclusion in a hospital admission or 30 days, whichever is shorter, triggers a review to find alternative strategies for dealing with a patient's behaviors. Section 415.262(c)(3) was revised so that a physician who delegates the initial face-to-face evaluation may either conduct the followup face-to-face evaluation or ensure that it is conducted by another physician on the medical staff. A correction from age 17 to age 18 was made in §415.263(a)(4) and (b)(4). The requirements for notification in §415.264 were revised to reference pertinent laws, including the addition of subsection (c) that references Texas Health and Safety Code, §611.0045(b). In §415.266, staff who must accompany an individual being transported have been revised to require a registered nurse or physician assistant. In §415.268(a)(3), confusing language was deleted and the standard set by the Center for Medicare and Medicaid was used for all circumstances involving monitoring of persons in seclusion. The requirement for cardiac monitoring and documentation in subsection (b) of the same section was changed from 15 minutes to one hour. The title and content of §415.271 was revised to clarify intent with respect to staff review and documentation of changes in responsibility for patients in restraint or seclusion. Section 415.273(b) was revised to delete the time requirement that a meeting of staff, the patient, and the patient's family occur within 24 hours after an episode. Subsection (c) of §415.274 was revised to clarify differences in death reporting requirements for facilities with and without Medicare or Medicaid certification. New subsection (c)(3) was added to reference the Children's Health Act of 2000. Section 415.292(a)(4) was revised to require that an occupational or physical therapist be on the treatment team if a protective or supportive device is required. Subsection (c) of the same section was added to clarify that after a wound has healed, continued use of a protective device is considered mechanical restraint.

A public hearing was held in the TDMHMR Central Office, Austin, on August 15, 2003. Public testimony concerning the new subchapter was provided by Aaryce Hayes, Advocacy, Inc., Austin; Terry Howard, Crises Prevention Institute; and Matt Wall, Texas Hospital Association. Written comments suggesting specific changes to the sections were received from Jerry Echols, MD, East Texas Medical Center; Jean Gisler, RN, FNP-C, Victoria; Aaryce Hayes, Advocacy, Inc., Austin; Sharon Meadors, Padre Behavioral Hospital, Corpus Christi; Dicey Smith, RN, CS-PMH, Millwood Hospital, Arlington; Matt Wall and Susan Mendoza, Texas Hospital Association, Austin; Jim Willmann, Texas Nurses Association, Austin; and Susan Mendoza, Presbyterian Hospital, Dallas. Texas Autism Advocacy, Austin, and several individuals submitted written comments

against the new subchapter: William K. Amundsen, Katy; Lisa Anthony; Marianna Bond; Cindy Carrell, LSW; Eugene Drake; Marsha Earley, Austin; Martha Gadberry; Todd "Michelle" Guppy; Dolly Holman; Jean Keel; Lori Bender Kennedy, Cypress; Clarice Motter, Houston; Ronnie Schleiss, Austin; Jean Shoup, Brenham; and Marrlene Thomson, Austin. Concerning reproposed §415.262, public comments were received from Spindletop MHMR Services, Beaumont.

One commenter noted that only half of the commenter's recommendations had been incorporated into the proposal. The commenter noted that facilities are currently dealing with budget and reimbursement cutbacks as well as manpower issues, and suggested that overly prescriptive rules could potentially impact facilities' abilities to find resources to provide patient care. The department responds that the objective of inviting public participation in drafting rules for proposal is to identify and resolve as many issues as it can as early as possible in the process. It is not possible to fully incorporate all recommendations, many of which are often contradictory or are constrained by law and resources. To the extent feasible, prescriptiveness is avoided when it is not necessary to ensure patient health, welfare, and safety.

Several commenters who identified themselves as parents of children with autism opposed the new subchapter and expressed grave concerns about the use of restraint and seclusion with children with autism. Many of the commenters' concerns appear to have been based on misinformation that is not supported by the content of the new subchapter.

Many of these commenters indicated that the subchapter allowed the use of restraint or seclusion for the first time. The department responds that regulation of restraint and seclusion in mental hospitals in Texas is not new. Administrative rules governing restraint and seclusion in mental hospitals were first promulgated in the late 1970s. The version of the subchapter to which this public comment pertains clearly states as its aim the reduction or elimination of the use of restraint and seclusion. It imposes time limitations on restraint and seclusion that are shorter than in any previous version. In many respects, it provides more, not fewer, protections for patients than previous versions of the subchapter.

Some of the commenters suggested that the new subchapter applied in settings in which it is not applicable. The department clarifies that the subchapter does not apply to general (acute care) hospital settings or in emergency rooms of general (acute care) hospitals. The subchapter does apply in general (acute care) hospital wings that are licensed by the Texas Department of Health as psychiatric units. It also applies to emergency rooms in psychiatric hospitals. The department further clarifies that the provisions related to general medical and surgical restraint and protective and supportive devices are intended to ensure that patients are not unduly restrained for routine procedures. They are also intended to ensure that patients are not restrained for behavioral purposes using medical reasons that are not supported by facts.

Commenters expressed concern that the new subchapter applies to public schools. The department responds that the new subchapter is not applicable in public school settings. Restraint in public schools is governed by the Education Code, §37.021. Section 37.021 references department rules but only in the context of TDMHMR-contracted mental health programs, not public schools. Similarly, the new subchapter does not apply to private residential treatment facilities. It applies only to Waco Center for Youth, a facility operated by TDMHMR.

Many commenters suggested that individuals with autism are routinely served in TDMHMR mental health facilities. The department responds that it does not serve individuals with a sole diagnosis of autism in mental hospitals. In the absence of a co-occurring diagnosis of serious mental illness, individuals with autism are not eligible for admission into state mental health facilities. The Texas Mental Health Code stipulates state mental health facilities operated by TDMHMR are authorized to serve individuals with mental illnesses, excluding individuals with a sole diagnosis autism, mental retardation, or epilepsy. Private psychiatric hospitals are not licensed to treat children with a sole diagnosis of autism. Autism is a developmental disorder, not a mental illness or behavioral disorder. Furthermore, in the event that a patient with co-occurring disorders (such as serious mental illness and autism) is admitted to a state mental health facility or private hospital, the physician is required to conduct an individualized assessment at the time of admission, taking into consideration potential contraindications to the use of restraint or seclusion.

Commenters questioned why rules governing restraint and seclusion were promulgated instead of rules governing best practices in behavior management. The department responds that restraint and seclusion are safety interventions only. They are neither treatment nor a form of behavior management. The subchapter does not address best practices in behavior management because it is not about behavior management. The new subchapter prohibits the use of restraint or seclusion as behavior management and emphasizes that preventive, de-escalative, and verbal interventions should be attempted first prior to using restraint or seclusion in an emergency.

The commenters stated that the new subchapter does not define "emergency." The department responds that "behavioral emergency" is defined in §415.253(2) and that is the term used in the rule

Commenters suggested that they had been informed that although the rules limit the duration of personal restraint, if the time limit were reached, mechanical restraint would automatically be used. The department responds that the rules limit the use of personal restraint to 15 minutes because personal restraint is intrusive and dangerous. There is no mandate to use mechanical restraint if a patient does not respond to personal restraint.

Commenters expressed concern that any staff person could initiate restraint for any reason. The department responds that each use of restraint or seclusion, including personal restraint of any duration, requires a physician's order. Only staff who have been trained as required by the subchapter may initiate restraint in an emergency. The decision to restrain an individual may only be made in a behavioral emergency and must be clinically justified by the physician. The patient must be closely monitored and released as soon as possible. This provision is based in Texas statute dating back to 1929. Furthermore, the new subchapter requires that families must be informed of each use of restraint or seclusion.

With reference to §415.253(1), a commenter noted that in some aspects the new definition of "behavioral emergency" is an improvement over the previous definition of "emergency" in Chapter 405, Subchapter F, because it focuses on behaviors. The commenter suggested that to better insure compliance with the federal language and further reduce subjectivity, the phrase "A situation in which preventive, de-escalative, or verbal techniques have been considered and determined..." should be changed to

"A situation in which preventive, de-escalative, or verbal techniques have been attempted and determined...." The department responds that its interpretation of the federal language is that it is necessary to consider and when appropriate, attempt, alternatives. This is reflected in provisions found at §415.261(a)(3): "Before ordering restraint or seclusion, the physician must take into consideration information that could contraindicate or otherwise affect the use of restraint or seclusion, including information obtained during the initial assessment of each individual at the time of admission or intake...." The department's interpretation also takes into account situations in which first attempting preventive, de-escalative, or verbal techniques may constitute immediate risk of harm to the patient or others.

The same commenter suggested that in the definition of "behavioral emergency," references to patient behavior should be qualified with the use of "overtly" as follows: "(A) imminent probable death or substantial bodily harm to the individual because the individual is overtly attempting to commit suicide or serious bodily harm; or (B) imminent physical harm to others because of acts the individual overtly commits." The department responds that although the commenter's intent appears to be to discourage the unwarranted use of restraint or seclusion by requiring signs of imminent danger to be obvious, through the addition of the word "overtly," doing so may be prevent timely intervention when such behaviors are discernible but covert. All orders for restraint or seclusion must be documented and clinically justified.

Concerning §415.253(9), a commenter questioned the differences between the definition of "emergency medical condition" in the subchapter and in the federal Emergency Medical Treatment and Active Labor Act (EMTALA) definition. The department responds that the federal EMTALA definition is applicable in a specific set of circumstances involving issues of stabilization for transport. The department's definition is broader because it is not limited to these circumstances.

Regarding §415.253(16), a commenter noted that the definition of "personal restraint" in the new sections and the sections to be repealed are the same. However, in Chapter 405, Subchapter F, §405.125(c), the subchapter allows that personal restraint "used for less than five minutes in an emergency is not subject to the reporting and monitoring requirements...." The commenter noted that this exception is omitted from the proposed sections, and asked that the exception be reinstated because such use of personal restraint is documented in the patient's medical record. The commenter noted that requiring the required processes and documentation of personal restraint of less than five minutes in duration as restraint would not favorably impact treatment and would place an undue burden on physician and hospital. The department responds that the rules as proposed and adopted are written to be in compliance with federal regulations.

Concerning the definition of "Psychiatric-mental health nurse practitioner (PMHNP) or psychiatric-mental health clinical nurse specialist (PMH-CNS)" in §415.252(20), three commenters noted that the terms "psychiatric-mental health nurse practitioner (PMHNP)" and "psychiatric-mental health clinical nurse specialist (PMH-CNS)" have specific meanings under the Nurse Practice Act and suggested that in order to avoid confusion, the department should consider deleting the terms and replacing them with the term "advanced practice nurse." Commenters stated the belief that advanced practice nurses are qualified to perform tasks otherwise assigned to PMHNPs and PMH-CNSs, and that no further qualifications are needed. The department responds that is has revised the subchapter as adopted to delete the requirements for special qualifications for advanced practice nurses. The term that is defined in the subchapter as adopted is "advanced practice nurse."

Concerning the same definition, a commenter noted that it limits advanced practice nurses covered by the proposed rules to PMHNPs and PMH-CNS and requires that they have prescriptive authority. The commenter stated that the distinction between physician assistants and advanced practice nurses is not justified, and that if specialized education in psychiatric mental health is a justified requirement, then it should be applied to both physician assistants and advanced practice nurses. The commenter stated the belief that although specialized knowledge may be required for some behavioral procedures, it is not required for all procedures. The department responds that is has revised the subchapter as adopted. It has deleted the requirement that advanced practice nurses be qualified as PMHNPs or PMH-CNS. For physician-delegated face-to-face evaluations, the requirement has been added that advanced practice nurses and physician assistants must be appointed to the medical staff and privileged to practice in the facility or that part of the facility to which the subchapter applies and must work under the clinical supervision of a physician who is appointed to the medical staff and privileged to practice in the facility or that part of the facility to which the subchapter applies.

Regarding §415.254(i), a commenter questioned designating a limit on the maximum time provided for a transitional hold. The commenter expressed concern that any designation of time would be understood by staff as permission to hold for the full duration or could result in inappropriate handling under the pressures of time. Concerning the same section, another commenter strongly supported the guidance provided by the timeframe delineated with respect to transitional holds. The commenter stated that concerns have been expressed that the one minute may routinely become a maximum time frame, but noted that many training programs encourage restraint last one minute or less. The commenter concluded that this amount of time should be more than adequate to transition an individual from a prone or supine position and the language should simply be a reinforcement of what is already in training, and stated that this direction is preferable to a less stringently defined transitional hold which may exceed one minute. Also concerning the section, three commenters asked for a change to the phrase "and shall not exceed one minute in duration" to the following: "and shall be no longer than necessary to achieve the transition." The commenters stated that the time period is too prescriptive and prone or supine holds are meant only to be transitional. The department responds that in the opinions of both specialists in the management of aggressive behavior and expert clinicians, one minute provides ample time for a transitional hold.

With respect to the same provision, the commenter requested that language be added from the current TDMHMR rules governing abuse in facilities that indicates that failure to use Prevention and Management of Aggressive Behavior (PMAB) or inappropriate use of PMAB may be investigated as abuse or neglect. The department responds that the subchapter applies to entities that are not required to use PMAB. The inclusion of the provision in the subchapter that applies to facilities that must use PMAB is appropriate and sufficient.

Concerning §415.256(d), commenters recommending changing "physician's clinical justification" to the "nurse's judgment" with

respect to the decision to simultaneously use more than one mechanical device. The commenter stated that such a decision is appropriately a matter of nursing judgment. The department responds that only a physician can order restraint and in ordering restraint, must specify the type of restraint to be used. Other staff are not authorized to add additional types of mechanical devices to the physician's order for a specific mechanical restraint. The simultaneous use of more than one mechanical device requires a physician's order and clinical justification.

With respect to §415.257(c)(4)(B), a commenter expressed the opinion that the requirement for all staff who initiate involuntary interventions to be trained in cardiopulmonary resuscitation is unnecessarily restrictive for hospitals. The commenter stated that the standard was understood to require all direct care staff to be CPR certified because in an emergency unlicensed staff may initiate personal restraint. The commenter proposed that the standard be changed to apply to all licensed nursing staff. The department responds that as written, the requirement applies to all staff who initiate involuntary interventions, including direct care staff, licensed nursing staff, and any other licensed or unlicensed staff.

Concerning §415.261(a)(1), a commenter noted that 42 CFR(f)(3)(I) states "The use of a restraint or seclusion must be (I) Selected when less restrictive measures have been found to be ineffective to protect the patient or others from harm...." There is no language which qualifies this requirement; therefore the language "when appropriate" does not appear to be in compliance with federal law. The commented stated that a review of client records indicates that staff routinely document the use of verbal interventions prior to initiation of restraint and that this is not an unrealistic or burdensome expectation. The department responds that its interpretation of the federal requirements is that it is necessary to consider and when appropriate, attempt, alternatives. This is reflected in provisions found at §415.261(a)(3): "Before ordering restraint or seclusion, the physician must take into consideration information that could contraindicate or otherwise affect the use of restraint or seclusion, including information obtained during the initial assessment of each individual at the time of admission or intake...." The department's interpretation also takes into account situations in which first attempting preventive, de-escalative, or verbal techniques may constitute immediate risk of harm to the patient or others.

In §415.261(a)(11), it is required that the treatment team consult with the medical director or designee to explore alternatives if seclusion and/or restraint have to be utilized more often than two times in any 30-day period. A commenter noted that the length of stay for inpatient hospitalizations is brief and readmission within 30 days is not uncommon. In the case of such readmissions, there are logistical difficulties that attach to using two charts, which is time consuming and does not improve patient care. The commenter suggested revising the language to "per hospital admission or 30 days, whichever is shorter." The department concurs and has changed the language accordingly.

Concerning §415.262 as reproposed, a commenter recommended that the language in subsection (c)(2)(A) and (B) be revised to state: "A physician may delegate the face to face evaluation to a staff person who is under the clinical supervision of a physician appointed to the medical staff and who is privileged to practice in the facility. This delegation can include a physician's assistant, an advanced practice nurse, or a registered nurse who is privileged to practice in the facility." The department responds that delegation was intentionally limited to a physician's assistant or advanced practice nurse who is on the medical staff.

Regarding §415.262 as reproposed, a commenter recommended that the language in subsection (c)(3) be revised to state: "A physician who delegated the face to face evaluation following the initiation of restraint/seclusion must ensure that the evaluation is conducted within 24 hours by either the delegating physician or another physician appointed to the facility medical staff as soon as possible and not later than 24 hours following the initiation of restraint or seclusion." The commenter noted that the suggested rewording would allow one of the staff physicians to conduct and complete the face to face if any of the three unit physicians are not scheduled or available within the 24-hour time frame. The department responds that language has been changed in response to the commenter's concern.

With respect to §415.264(a)(1), a commenter questioned if the notification of family of a minor between ages 15 and 18 who is involuntarily committed is in contradiction to the proposed new subchapter governing standards of care and treatment in psychiatric hospitals (Chapter 411, Subchapter J), which allows minors ages 16 and 17 to be admitted to the hospital by their parents. The commenter asked if this would not also suggest that these parents need to be informed of emergency interventions. The department responds that language has been added to address the inconsistency.

Concerning §415.267(b), a commenter suggested that although the intent may be there, the context within which this language is read is in response to a staff member initiating conversation and does not clearly indicate that the individual must be free to communicate at all times. An individual who is deaf or hearing impaired and uses his or her hands to communicate must be able to utilize at least one hand at all times in order to communicate proactively if in distress. This is a reasonable accommodation to make for an individual who is hearing impaired and communicates using sign language. Discussions with staff indicate that this is the intent, but the language can be interpreted differently due to the context of the rest of the section. The department responds that the seriousness of behaviors that justify temporary restraint are such that the decision to release one hand must be made on individual basis. Staff are required to continuously observe patients in restraint in order to quickly intervene if the individual shows signs of distress.

With reference to §415.268(a)(3), a commenter suggested that the use of video and audio equipment in monitoring an individual in seclusion tends to lend itself to the observer multi-tasking rather than observing the individual "free of distractions." The subchapter seeks to ensure that if the person is in distress, that it is noted and appropriate interventions occur immediately. The term "in close proximity" is not defined and if the continuous observation takes place in an area away from the individual, there will likely be a delay in executing an intervention if it becomes necessary. If an individual has remained agitated for over an hour to the extent that he or she fits the definition of emergency, perhaps a different intervention should be considered. The department responds that it declines to make changes because video and audio monitoring is an accepted practice. The requirement for continuous observation would not be met if staff were distracted and unable to promptly respond. If staff were not performing their job tasks adequately, this would be a management issue for the facility.

Concerning §415.268(a)(1), a commenter suggested that requiring a staff member of the same gender to provide one-to-one observation may unnecessarily constrain staffing resources. The assignment of one-to-one observation needs to be made by the charge nurse utilizing the best resource available. The department responds that unless observation by a staff member of the same gender of the patient is clinically contraindicated, observation must be conducted by a staff member of the same gender for purposes of privacy, to minimize risk of exploitation, to respond to potential trauma issues, and to facilitate attending to personal hygiene needs.

With regard to §415.268(a)(3), a commenter stated that the paragraph is not understandable as written and that the last sentence seems to contradict the first one. The department responds that the language has been revised to be consistent with federal requirements of the Centers for Medicare and Medicaid Services, which allow audiovisual observation after one hour in all cases.

With respect to §415.268(b)(1), a commenter asked if cardiac monitoring every 15 minutes meant that a pulse and respiration count are required every 15 minutes or if general observation to ensure that the patient is breathing is required. The commenter asked how the requirement would be evaluated and suggested that to take a pulse and respiration count every 15 minutes would agitate a patient and could increase the time a total seclusion or restraint. The department responds that the requirement for cardiac monitoring has been revised to hourly to minimize intrusiveness.

Regarding §415.271, a commenter supported language intended to ensure that staff communication regarding the care and treatment of the individual occurs. The commenter noted that this is an advantage not only for the individual but also for the staff by increasing accountability. It ensures that when one shift departs, both shifts are clear with regard to the status of the individual in the emergency intervention. The department concurs and has broadened the requirement to address any situation in which responsibility for the patient transfer between staff. The title of the section has been similarly revised.

Concerning the same subsection, a commenter noted that requiring the review at change of shift to be documented is demanding of staff at a very busy time that is better spent assessing all patients than requiring a timed documentation that the seclusion patient has been observed. The commenter asked if this requirement will necessitate an actual timed progress note. The department responds that it has clarified the requirement to be specific to staff with primary responsibility for a patient in restraint or seclusion. Further, it has broadened the requirement to reflect the intent that anytime that primary responsibility for a patient in restraint or seclusion transfers between staff, there should be a review and a documentation of the review by the involved staff persons.

Concerning §415.272 (a) and (b), a commenter asked if the advanced practice nurse was intentionally left out or if the registered nurse must be an advanced practice nurse. The commenter asked if the charge RN could make the decision for release. The department responds that an advanced practice nurse is an RN and that either an RN or an advanced practice nurse can fulfill the designated function.

Regarding §415.273(a)(3), commenters recommended deleting the requirement to document observations of the individual's behavior during the transition period following release from restraint. The department responds that documenting the individual's behavior immediately following release from restraint provides information that can guide other staff if a subsequent emergency intervention is required.

A commenter expressed support for §415.273(b), stating that it better ensures that the family is kept informed about the care and treatment of a family member. The commenter suggested that the exchange of information would be helpful in identifying for the family what issues may cause an individual to lose control and what interventions are useful in helping regain self-control. This is essential considering that the family will likely be the primary support system when the individual is released. The department concurs.

With reference to the same subsection, a commenter stated the provision is not realistic in dealing with families of most children. The commenter suggested that it is unnecessarily demanding to require the presence of a family member within 24 hours to review use of seclusion or restraint. The department concurs and has deleted the requirement that the meeting must occur within 24 hours.

Three commenters suggested that subsection (b) be deleted. The commenters suggested that requiring the debriefing of the family is unnecessary and cumbersome, and exceeds the requirements of the Centers for Medicare and Medicaid Services in the Medicare conditions of participation. The department responds that the involvement of the family in all aspects of the patient's treatment is a valuable asset that contributes to better care, treatment, and patient outcomes.

With respect to §415.291(b)(1)(B), a commenter stated that documentation of each use of clinical time out is staff intensive and limits staff time to documentation in lieu of patient interactions. The department responds that clinical time out is an aspect of the patient's care that must be documented in order to fully understand the patient's progress.

Concerning §415.274(b), a commenter requested that "including psychoactive medication" be added to the interventions that are reported daily to the chief executive officer. The department responds that the use of psychoactive medication in an emergency is addressed in Chapter 405, Subchapter FF, concerning consent to treatment with psychoactive medication.

Also concerning §415.274(c), a commenter expressed support for the language requiring reporting of deaths that occur within 24 hours after the individual has been removed from restraint or seclusion, noting that it is a requirement of the Children's Health Act of 2000. The department responds that it has deleted the language referenced since it is not contained in the Medicare Conditions of Participation, and subsection (c) has been added to note the Children's Health Act of 2000.

The same commenter suggested that the following regulation in 42 USC 290aa, Part H, Section 592, should be reviewed for issues that are relevant to this subchapter: Each facility to which the Protection and Advocacy for Mentally Ill Individuals Act of 1986 applies shall notify the appropriate agency, as determined by the Secretary, of each death occurs at each such facility while a patient is restrained or in seclusion, or where it is reasonable to assume that a patient's death is a result of such seclusion or restraint. A notification under this section shall include the name of the resident and shall be provided not later than 7 days after the date of the death of the individual involved. Sections 591 and 595 should also be reviewed for applicability to facilities which receive Medicaid or Medicare and that provide services

to children. The reporting requirement in Section 592 should be included and responsibility assigned for relaying the relevant information to the Protection and Advocacy organization. The department responds that it has added subsection (c) to address the commenter's concern. The provision states that the Children's Health Act of 2000 and federal regulations promulgated pursuant to the Act contain additional reporting requirements for facilities that are subject to its requirements.

Also with reference to §415.274(c), three commenters suggested that the phrase "or within 24 hours after the individual has been removed from restraint or seclusion" be deleted. The commenters noted that the proposed rule would require a death to be reported to the CMS regional office by the next business day following the individual's death. The commenters stated that the Medicare Conditions of Participation at 42 CFR 482.13(f)(7) require reporting only a death that occurs while a patient is restrained or in seclusion, or when it is reasonable to assume that a patient's death is a result of restraint or seclusion. The commenters recommended that the language in Medicare be followed. The department responds that it has deleted the language referenced since it is not contained in the Medicare Conditions of Participation, and subsection (c) has been added to note the Children's Health Act of 2000.

With reference to §415.290(d), a commenter stated that it is not clear that the section on documenting and reporting relates to emergency medication as well as other interventions. The use of medication in an emergency situation is an emergency intervention and as such it is an integral piece of information which must be collected and analyzed in the same manner as a personal restraint, mechanical restraint, or seclusion. The focus is on acknowledging the use and collecting data on the frequency of the use and the response of the individual to the administration of the medication. The department responds that requirements relating to the use of psychoactive medication in an emergency are contained in Chapter 405, Subchapter FF, relating to consent to treatment with psychoactive medication.

Concerning §415.292(a)(3), a commenter noted that the provision limits the ordering of protective and supportive devices, even those that are not behaviorally related, to being ordered by a PMHNP or PMH-CNS. The commenter stated the belief that this limitation is not justified and suggested that any qualified RN should be able to order such devices. The department concurs and has revised the provision to require an advanced practice nurse.

Concerning the paragraph (a)(4), a commenter requested that language be added that indicates that in considering the need for a supportive device, the treatment team must include an occupational or physical therapist. Their participation is not reflected in this language. The department responds that language has been added.

A commenter requested that language be retained from Chapter 405, Subchapter F, that states that once the wound has healed, the protective device is considered a mechanical restraint and is subject to the requirements for mechanical restraints. The department responds that language has been added.

DIVISION 1. GENERAL PROVISIONS

25 TAC §§415.251 - 415.257

The rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in private mental health facilities, community-based crisis stabilization services, and crisis residential services; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

§415.253. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced practice nurse--A registered nurse approved by the Texas Board of Nurse Examiners to practice as an advanced practice nurse.

(2) Behavioral emergency--A situation in which preventive, de-escalative, or verbal techniques have been considered and determined to be ineffective and it is immediately necessary to restrain or seclude an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual is attempting to commit suicide or serious bodily harm; or

(B) imminent physical harm to others because of acts the individual commits.

(3) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means, for purposes of restraining an individual and which is not a standard treatment for the individual's medical or psychiatric condition.

(4) Chief executive officer (CEO)--The highest ranking administrator of a facility or the administrator's designee.

(5) Clinical timeout--A procedure in which an individual, in response to verbal suggestion from a staff member, voluntarily enters and remains for a period of time in a designated area from which egress is not prevented.

(6) Clinically competent registered nurse--A registered nurse who has demonstrated the competencies required by this subchapter.

(7) Competence--Demonstrated knowledge, skill, and ability.

(8) Continuous face-to-face observation--Maintaining an in-person line of sight that is uninterrupted and free of distraction.

(9) Department--The Texas Department of Mental Health and Mental Retardation (TDMHMR).

(10) Emergency medical condition--A non-psychiatric medical condition manifesting itself by acute symptoms, including severe pain, of sufficient severity such that the absence of immediate attention could reasonably be expected to result in serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or a threat to the health or safety of the woman or the unborn child.

(11) Episode--The time period from the initiation of restraint or seclusion until the release of the individual.

(12) Facility--An entity to which the subchapter applies, as identified in §415.252 of this title (relating to Application).

(13) Individual--Any person receiving mental health services from a facility.

(14) Initiation--The time at which a personal or mechanical restraint is applied to an individual or an individual is placed in seclusion.

(15) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, managing conservator of a minor individual, guardian of an adult individual, or person with activated power of attorney for health care decisions.

(16) Mechanical restraint--The application of a device restricting the movement of the whole or a portion of an individual's body to control physical activity, as described in §415.256 of this title (relating to Mechanical Restraint Devices).

(17) Personal restraint--The application of physical force alone restricting the free movement of the whole or a portion of an individual's body to control physical activity.

(18) Physical force--Pressure applied to an individual's body.

(19) Physician assistant--A physician assistant licensed under Chapter 155 of the Texas Occupations Code.

(20) Protective device--Device used voluntarily to prevent injury or to permit wounds to heal.

(21) Quiet time--A procedure in which an individual, on the individual's own initiative, enters and remains for a period of time in a designated area from which egress is not prevented.

(22) Restraint--The use of personal restraint or a mechanical device to involuntarily restrict the free movement of the whole or a portion of an individual's body in order to control physical activity.

(23) Seclusion--The involuntary confinement of an individual away from other individuals for any period of time in a hazard-free room or other area in which direct observation can be maintained and from which egress is prevented.

(24) Staff member--A person with direct care responsibilities, including full-time and part-time employees, contractors, and professionals granted privileges by the hospital.

(25) Substance use disorders--The use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning and which meets criteria described in the current Diagnostic and Statistical Manual for substance abuse or substance dependence.

(26) Supportive device--A device voluntarily used by an individual to posturally support the individual or to assist the individual who cannot obtain or maintain normal bodily functioning.

(27) Treating physician--The physician assigned by the facility and designated in the individual's medical record as the physician responsible for the coordination and oversight of the implementation of an individual's comprehensive treatment plan.

§415.254. Prohibited Practices.

(a) No intervention, voluntary or involuntary, shall be used:

(1) as a means of discipline, retaliation, punishment, or coercion;

(2) for the purpose of convenience of staff members or other individuals; or

(3) as a substitute for effective treatment or habilitation.

(b) Clinical timeout and quiet time shall not be used:

(1) in a behavioral emergency; or

(2) without the individual's consent.

(c) Supportive or protective devices shall not be used:

(1) in a behavioral emergency; or

(2) without the individual's consent.

(d) A restraint shall not be used that:

(1) secures an individual to a stationary object while the individual is in a standing position;

(2) causes pain to restrict an individual's movement (pressure points or joint locks);

(3) restricts circulation;

(4) obstructs an individual's airway or puts pressure on the torso;

(5) impairs an individual's breathing; or

(6) interferes with an individual's ability to communicate.

(e) Use of chemical restraint is prohibited.

(f) Orders for the use of restraint or seclusion shall never be written as a standing order or on an as-needed (PRN) basis.

(g) Use of restraint or seclusion solely as a behavior therapy program or as part of a behavior therapy program is prohibited.

(h) Use of a restraint board in a behavioral emergency is prohibited except when necessary to promptly transport an individual to another location. A restraint board may be used during medical and dental care, if necessary, and approval as required under §415.285(f) of this title (relating to Restraint as Part of Medical, Dental, Diagnostic, or Surgical Procedures) has been obtained, and as a regular and customary part of care and treatment or transportation.

(i) A prone or supine hold shall not be used except to transition an individual into another position and shall not exceed one minute in duration.

§415.256. Mechanical Restraint Devices.

(a) Only commercially available or departmentally approved devices specifically designed for the safe and comfortable restraint of humans shall be used. The alteration of commercially available devices or independent development of devices must:

(1) be based on the individual's special physical needs (e.g., obesity or physical impairment);

(2) take into consideration any potential medical (including psychiatric) contraindications, e.g., history of physical or sexual abuse;

(3) be approved by a committee whose membership and functions are specified in the bylaws of the medical staff of the facility; and

(4) be described fully in writing, with a copy of the description forwarded to the TDMHMR medical director for review. Approval of the device by the TDMHMR medical director is required before the device is used.

(b) A staff member must inspect a device before and after each use to ensure that it is in good repair and is free from tears or protrusions that may cause injury. Damaged devices shall not be used to restrain an individual.

(c) Despite their commercial availability, the following types of devices shall not be used to implement restraint:

(1) those with metal wrist or ankle cuffs;

(2) those with rubber bands, rope, cord, or padlocks or key locks as fastening devices;

(3) long ties (e.g., leashes);

(4) bed sheets; or

(5) gags.

(d) In a behavioral emergency, restraints are intended to be used independently of each other. The simultaneous use of more than one mechanical device, a mechanical device and personal restraint, or a mechanical device and seclusion requires the physician's clinical justification documented in the individual's medical record.

(e) The following are approved mechanical devices.

(1) Anklets - Padded bands of cloth or leather that are secured around the individual's ankles or legs using hook-and-loop (e.g., Velcro) or buckle fasteners and attached to a stationary object (e.g., bed or chair frame). The device must not be secured so tightly as to interfere with circulation, nor so loose as to permit chafing of the skin.

(2) Arm splints or elbow immobilizers - Strips of any material with padding that extends from below to above the elbow and which are secured around the arm with ties or hook-and-loop (e.g., Velcro) tabs. If appropriate, they should be secured so that the individual has full use of the hands. The device must not be secured so tightly as to interfere with circulation, nor so loose as to permit chafing of the skin.

(3) Belts - A cloth or leather band that is fastened around the waist and secured to a stationary object (e.g., chair frame) or used for securing the arms to the sides of the body. The device must not be secured so tightly as to interfere with breathing and circulation.

(4) Camisole - A sleeveless cloth jacket that covers the arms and upper trunk and is secured behind the individual's back. The device must not be secured so tightly as to interfere with breathing and circulation or cause muscle strain. Caution should be exercised when using this device because it may impair balance and the individual's ability to break a fall.

(5) Chair restraint - A padded stabilized chair that supports all body parts and prevents the individual's voluntary egress from the chair without assistance (e.g., table top chair, Geri-chair). Mechanical restraint devices (e.g., wristlets, anklets) are attached or may be easily attached to restrict movement. The devices must not be secured so tightly as to interfere with breathing and circulation.

(6) Enclosed bed - A bed with high side rails or other type of side enclosure and, in some cases, an enclosure (e.g., mesh, rails, etc.) on the top of the bed that prevents the individual's voluntary egress from the bed.

(7) Helmet - A plastic, foam rubber, or leather head covering, such as a sports helmet, that may include an attached face guard. The device must be the proper size and the chin strap should not be so tight as to interfere with breathing and circulation.

(8) Mittens - A cloth, plastic, foam rubber, or leather hand covering such as boxing and other types of sport gloves that are secured around the wrist or lower arm with elastic, hook-and-loop (e.g., Velcro) tabs, ties, paper tape, pull strings, buttons, or snaps. The device must not be secured so tightly as to interfere with circulation.

(9) Restraining net - Mesh fabric that is placed over an individual's upper and lower trunk with the head, arms, and lower legs exposed; the net is secured over a mattress to a bed frame and is never placed over the individual's head. The restraining net must be loose enough to allow some movement. The device must not be secured so tightly as to interfere with breathing and circulation.

(10) Restraint bed - A collapsible stretcher of steel frame construction with a fabric cover. The restraint bed has an adjustable backrest and a padded mat to be used under the individual's head and upper body to prevent injury. Approved wristlets, anklets, and belts are used to safely and securely limit the individual's physical activity.

(11) Restraint board - A padded, rigid board to which an individual is secured face-up, unless that position is clinically contraindicated for that individual. This device will not be used to restraint an individual in a behavioral emergency except when necessary to promptly transport an individual to another location.

(12) Restraint chair or gurney - A chair or gurney manufactured for the purpose of transporting or restraining an individual who must remain restrained during transport.

(13) Straight jacket - A heavy canvas jacket that is open in the back and has sleeves that are stitched closed. The individual's arms are crossed in front; the sleeves secured with ties behind the individual's back. The device must not be secured so tightly as to interfere with breathing and circulation or cause muscle strain. Caution should be exercised when using this device because it may impair the individual's balance and ability to break a fall.

(14) Ties - A length of cloth or leather used to secure approved mechanical restraints (i.e., mittens, wristlets, arm splints, belts, anklets, vests, etc.) to a stationary object (i.e., bed or wheelchair frame) or to other approved mechanical restraints. Ties must not be secured so tightly as to interfere with breathing and circulation.

(15) Transport jacket - A heavy canvas sleeveless jacket that encases the arms and upper trunk, fastens with hook-and-loop (e.g., Velcro) tabs and roller buckles, and is held in place with a strap between the legs. The device is used only as a temporary measure during transport.

(16) Vest - A sleeveless cloth jacket that covers the upper trunk and is fastened in the back or front with ties or hook-and-loop tabs (e.g., Velcro). The vest may be secured to a stationary object (e.g., bed or chair frame). The vest and ties must not be secured so tightly as to interfere with breathing and circulation.

(17) Wristlets - Padded cloth or leather bands that are secured around the individual's wrists or arms using hook-and-loop (e.g., Velcro) or buckle fasteners and attached to a stationary object (e.g., bed or chair frame, waist belt). The device must not be secured so tightly as to interfere with circulation nor so loose as to permit chafing of the skin.

§415.257. Staff Training.

(a) The entities to which this subchapter applies as identified in §415.252 of this title (relating to Application) must ensure that all staff members are informed of their roles and responsibilities under this subchapter.

(b) Before assuming job duties involving direct care responsibilities, and at least annually, all staff members must receive training and demonstrate competence in:

(1) identifying the underlying causes of threatening behaviors exhibited by the individuals receiving mental health services;

(2) identifying aggressive or threatening behavior that may be related to an individual's non-psychiatric medical condition;

(3) explaining how the behavior of staff members can affect the behaviors of individuals;

(4) using de-escalation, mediation, self-protection, and other techniques, such as clinical timeout and quiet time; and

(5) recognizing and responding to signs of physical distress in individuals who are being restrained or secluded.

(c) Staff members who initiate involuntary interventions must receive training and demonstrate ongoing competence in:

(1) the initiation of seclusion;

(2) the application of personal restraint;

(3) the application of approved restraint devices; and

(4) management of emergency medical conditions following the facility's emergency plans for :

(A) obtaining emergency medical assistance ; and

(B) obtaining certification and using techniques of the American Red Cross or American Heart Association for cardiopulmonary respiration (CPR) and relief of foreign-body airway obstruction in the responsive and unresponsive victim of any age.

(d) Clinically competent registered nurses authorized to perform assessments of individuals who are in restraint or seclusion must receive ongoing training and demonstrate ongoing competence, or be retrained, in:

(1) monitoring cardiac and respiratory status and interpreting their relevance to the physical safety of the individual in restraint or seclusion;

(2) recognizing and responding to nutritional and hydration needs;

(3) checking circulation in, and range of motion of, the extremities;

(4) providing for hygiene and elimination;

(5) addressing physical and psychological status and comfort, including signs of distress;

(6) assisting individuals in meeting behavioral criteria for the discontinuation of restraint or seclusion;

(7) recognizing readiness for the discontinuation of restraint or seclusion; and

(8) recognizing when to contact emergency medical services to evaluate and/or treat an individual for an emergency medical condition.

(e) Staff authorized to monitor, under the supervision of clinically competent registered nurses, individuals who are in restraint or seclusion must receive training and demonstrate ongoing competence, or be retrained, in:

(1) monitoring respiratory status;

(2) recognizing nutritional and hydration needs;

(3) checking circulation in, and range of motion of, the extremities;

(4) providing for hygiene and elimination;

(5) addressing physical and psychological status and comfort, including signs of distress;

(6) assisting individuals in meeting behavioral criteria for the discontinuation of restraint or seclusion;

(7) recognizing readiness for the discontinuation of restraint or seclusion; and

(8) recognizing when to contact a registered nurse or emergency medical services to evaluate and/or treat an individual for an emergency medical condition.

(f) Registered nurses authorized to receive orders for restraint or seclusion, physicians authorized to give orders for restraint or seclusion, and physicians, physician assistants, and advanced practice nurses PMHNPs or PMH-CNSs who are authorized to perform evaluations of individuals who are restrained or secluded must receive training and demonstrate the competencies described in paragraph (d) of this section, and must receive training and demonstrate competence in:

(1) identifying facility-approved restraints;

(2) recognizing how age, weight, level of development or functioning, gender issues, ethnicity, and history of sexual or physical abuse may affect the way in which an individual reacts to physical contact;

(3) using behavioral criteria for the discontinuation of restraint or seclusion and assisting individuals in meeting these criteria; and

(4) identifying medical and psychological contraindications including physical abuse, sexual abuse, and substance abuse.

(g) When a staff member's duties change the staff member shall be assessed for competence and trained as necessary.

(h) The facility shall maintain documentation of training for each staff member. Documentation shall include the date of training, the name of the instructor, a list of successfully demonstrated competencies, the date competencies were assessed, and the name of the person who assessed competence.

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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Rodolfo Arredondo
Chairman, Texas MHMR Board
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For further information, please call: (512) 206-4516

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DIVISION 2. RESTRAINT OR SECLUSION INITIATED IN RESPONSE TO A BEHAVIORAL EMERGENCY

25 TAC §§415.261, 415.263 - 415.274

The rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt

rules as necessary for the proper and efficient treatment or persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in private mental health facilities, community-based crisis stabilization services, and crisis residential services; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

§415.261. General Principles for the Use of Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Each facility must develop and implement written policies and procedures consistent with this subchapter and the following general principles concerning the use of restraint or seclusion.

(1) It is the department's intent to reduce the use of restraint and seclusion as much as possible and to ensure other less restrictive alternatives are first attempted, when appropriate.

(2) Restraint or seclusion should only be used as an intervention of last resort after less restrictive measures have been found to be ineffective or are judged unlikely to protect the individual or others from harm.

(3) Before ordering restraint or seclusion, the physician must take into consideration information that could contraindicate or otherwise affect the use of restraint or seclusion, including information obtained during the initial assessment of each individual at the time of admission or intake. This information includes, but is not limited to:

(A) techniques, methods, or tools that would help the individual effectively cope with his or her environment;

(B) pre-existing medical conditions or any physical disabilities and limitations, including substance use disorders, that would place the individual at greater risk during restraint or seclusion;

(C) any history of sexual or physical abuse that would place the individual at greater psychological risk during restraint or seclusion;

(D) any history that would contraindicate seclusion, the type of restraint (personal or mechanical), or a particular type of restraint device; and

(E) an advance directive for mental health treatment, if there is one.

(4) When restraint or seclusion is the appropriate intervention, staff members should use it for the shortest period necessary and should terminate it as soon as the individual demonstrates the release behaviors specified by the physician.

(5) A physician must order each use of restraint or seclusion.

(6) Staff members must respect and preserve the rights of an individual during restraint or seclusion. Rights of individuals are described in Chapter 404, Subchapter E, of this title (governing Rights of Persons Receiving Mental Health Services).

(7) Staff members must provide a protected, private, and observable environment that safeguards the personal dignity and well-being of an individual placed in restraint or seclusion.

(8) Staff members must avoid causing undue physical discomfort and must not cause harm or pain to the individual when initiating or using restraint or seclusion.

(9) Staff members may use only the minimal amount of physical force that is reasonable and necessary to implement restraint or seclusion.

(10) Staff members may use psychoactive medication in an emergency only in accordance with Chapter 405, Subchapter FF of this title, relating to Consent to Treatment with Psychoactive Medication.

(11) The treatment team reviews alternative strategies for dealing with behaviors necessitating the use of restraint or seclusion more often than twice in a hospital admission or 30 days whichever is shorter. If the frequency of incidents of restraint or seclusion continues the treatment team will consult with the medical director or designee to explore alternative treatment strategies.

(12) An involuntary intervention is used in accordance with a written modification of the individual's plan of care. The treatment team must explore whether alternative treatment strategies for the future should be considered for an individual when restraint or seclusion is used:

(A) more often than twice in any 30-day period;

(B) in two or more separate episodes of any duration within 12 hours; or

(C) for more than 12 continuous hours.

(b) This subchapter represents minimum standards. The facility CEO may, through written policies and procedures, promulgate additional guidelines if they are consistent with this subchapter and do not conflict with:

(1) departmental rules;

(2) state or federal laws;

(3) the current version of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) *Comprehensive Accreditation Manual for Hospitals*; or

(4) other applicable accreditation standards.

§415.263. Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Original order. A physician may order restraint or seclusion for a period of time not to exceed:

(1) 15 minutes for personal restraint;

(2) one hour for mechanical restraint or seclusion for individuals under the age of 9;

(3) two hours for mechanical restraint or seclusion for individuals ages 9-17; and

(4) four hours for mechanical restraint or seclusion for individuals age 1817 and older.

(b) Renewed order. If the original order is about to expire and the clinically competent registered nurse has evaluated the individual face-to-face and determined the continuing existence of an emergency, the clinically competent registered nurse must contact the physician. A physician may renew the original order provided it would not result in the use of:

(1) personal restraint beyond 15 minutes total;

(2) mechanical restraint or seclusion beyond two hours total for individuals under age 9;

(3) mechanical restraint or seclusion beyond four hours total for individuals ages 9-17; or

(4) mechanical restraint or seclusion beyond eight hours total for individuals age 18 and older.

(c) New order. The physician must issue a new order to continue restraint or seclusion beyond the time limits described in subsection (b) of this section. Prior to issuing a new order, the physician, or the physician assistant, or advanced practice nurse to whom the physician delegates the authority to evaluate an individual in restraint or seclusion, must perform a face-to-face evaluation of the individual. The new order is subject to the time limitations described in subsections (a) and (b) of this section.

§415.264. Family Notification.

(a) The CEO or CEO's designee must notify the individual's legally authorized representative, or family member of each episode of restraint or seclusion initiated in response to a behavioral emergency as follows:

(1) Except as provided by 42 CFR Part 2 and subsection (c) of this section a staff member must notify as soon as possible the legally authorized representative of a minor under age 18 who is not or has not been married .

(2) Except as provided by subsection (c) of this section, in cases in which the adult individual has consented to have one or more specified family members informed regarding the individual's care, and the family member or members have agreed to be informed, a staff member will inform the family member or members of the restraint or seclusion episode within the time frame determined by prior agreement between the individual and specified family member(s).

(b) The date and time of notification and the name of the staff member providing the notification must be documented in the individual's medical record.

(c) As permitted by the Texas Health and Safety Code, §611.0045(b), a hospital may deny an individual's legally authorized representative access to any portion of a patient's record if the facility determines that the disclosure of such portion would be harmful to the patient's physical, mental, or emotional health.

§415.266. Restraint in Response to a Behavioral Emergency Occurring Off Facility Premises or During Transportation.

(a) All off-premises transport. A registered nurse or physician assistant as appropriate to the individual's clinical condition and the requirements of this subchapter, shall accompany the staff person(s) transporting an individual off premises when there is reason to believe that during the time away from the facility the individual may require:

(1) medical attention;

(2) administration of medication; or

(3) restraint.

(b) Excursion off facility premises. A staff member may not restrain an individual transported off facility premises unless the individual meets the criteria for a behavioral emergency, a physician orders the restraint, and transport is medically necessary with documented clinical justification.

(1) If restraint is required while an individual is on an excursion off facility premises, the staff member initiating the restraint shall contact a registered nurse to assist in obtaining a physician's order for the restraint as soon as feasible but not later than the timeframes prescribed in this subchapter.

(2) The staff members on the excursion must implement, monitor, document, nd report restraint in keeping with the requirements of this subchapter when restraint off premises is required.

(c) Restraint initiated prior to transportation to another facility. A staff member may not restrain an individual prior to departure unless the situation meets the criteria for a behavioral emergency, a physician orders the restraint, and transport is medically necessary with documented clinical justification.

(1) If a behavioral emergency exists and a physician orders restraint prior to departure, at least one of the staff members accompanying the individual to the destination facility must be a registered nurse.

(2) A female staff member must accompany a female individual.

(3) If the duration of transport exceeds the maximum allowable duration of restraint on the original order, and a behavioral emergency continues to exist, the registered nurse must obtain a physician's telephone order to renew the restraint or obtain a new order for restraint, and renewal, as soon as possible but not later than the timeframes prescribed in this subchapter.

(4) Staff members accompanying the individual from the originating facility are responsible for monitoring, documenting, and reporting restraint that is ordered and implemented prior to transportation. If transportation is for the purposes of transfer to another facility, staff at the originating facility must fax the required documentation to the destination facility on the day of transport. Staff at the destination facility are responsible for filing the documentation in the individual's medical record at the destination facility.

(d) Restraint initiated during transportation. If restraint is required following departure, a registered nurse must obtain a physician's order from the sending facility for the restraint as soon as feasible but not later than the timeframes prescribed in this subchapter. If a registered nurse is not present during transportation, the staff member initiating restraint must contact a registered nurse to obtain a physician's order as soon as possible but not later than the timeframes prescribed in this subchapter.

(1) If an individual is restrained during transportation, the staff member accompanying the individual shall ensure that required monitoring occurs and that documentation, including the physician's order, is faxed to the destination facility before or at the time the individual is delivered to the destination facility.

(2) Staff at the originating facility are responsible for documenting and reporting restraint that is ordered and implemented during transportation. Staff at the destination facility are responsible for filing the documentation in the individual's medical record at the destination facility.

(e) Comfort during transportation. The staff members shall give an individual reasonable opportunities for food and water and to use the bathroom.

§415.268. Observation, Monitoring, and Care of the Individual in Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Observation.

(1) A staff member of the same gender as the individual must maintain continuous face-to-face observation of an individual in mechanical restraint, unless the individual's history or other factors indicate this would be contraindicated, e.g., sexual or physical abuse perpetrated by someone of the same gender, in which case a staff member of the opposite gender may be used.

(2) A staff member who is not physically applying personal restraint must maintain continuous face-to-face observation of an individual in personal restraint.

(3) A staff member must maintain continuous face-to-face observation of an individual in seclusion for at least one hour. After one hour, the staff member may monitor the individual continuously using simultaneous video and audio equipment in close proximity to the individual.

(b) Monitoring. Staff must ensure adequate respiration and circulation of the individual in restraint at all times.

(1) Respiratory status, circulation, and skin integrity must be monitored continuously and documented at least every 15 minutes (or more often if deemed necessary by the ordering physician). Cardiac status must be monitored and documented hourly (or more often if deemed necessary by the ordering physician).

(2) An assigned staff member must perform range of motion exercises for each extremity, one extremity at a time, for at least five minutes during every hour that an individual is in mechanical restraint.

(c) Care. Staff must provide for the hygiene, hydration, nutrition, elimination, and safety of an individual in emergency restraint or seclusion. The individual in restraint or seclusion must be provided:

(1) bathroom privileges at least once every two hours (or more frequently, if requested and not contraindicated);

(2) an opportunity to drink water or other appropriate liquids every two hours (or more frequently, if requested and not contraindicated);

(3) a bath at least once daily (or more frequently, if clinically indicated);

(4) medications as ordered;

(5) regularly scheduled meals and snacks served on dishes that are appropriate for safety; and

(6) an environment that is free of safety hazards, adequately ventilated during warm weather, adequately heated during cold weather, and appropriately lighted.

§415.271. Transfer of Primary Responsibility for Patient in Restraint or Seclusion .

(a) At the time of transfer of primary responsibility for the patient in restraint or seclusion, including transfer of responsibility at the change of shift, the staff member with primary responsibility must meet with the staff member who will assume primary responsibility to review the patient's status

(b) The review must be documented and include:

(1) information regarding the time an involuntary intervention was initiated;

(2) the current status of the individual's physical, emotional, and behavioral condition;

(3) any medication administered; and

(4) type of care needed.

§415.273. Actions To Be Taken Following Release of an Individual from Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) Immediately following the release of an individual from restraint or seclusion, a staff member must:

(1) take appropriate action to facilitate the individual's reentry into the social milieu by providing the individual with transition activities and an opportunity to return to ongoing activities;

(2) observe the individual for at least 15 minutes; and

(3) document observations of the individual's behavior during this transition period in the individual's medical record.

(b) As soon as possible after an episode of restraint or seclusion, available staff members involved in the episode, supervisory staff, the individual, the LAR, and, (with the consent of the individual) family members must meet to discuss the episode. The purpose of the debriefing is to:

(1) identify what led to the episode and what could have been handled differently;

(2) identify strategies to prevent future restraint or seclusion, taking into consideration suggestions from the individual and the individual's advanced directive, if any;

(3) ascertain whether the individual's physical well-being, psychological comfort, and right to privacy were addressed;

(4) counsel the individual in relation to any trauma that may have resulted from the episode;

(5) when indicated, identify appropriate modifications to the individual's treatment plan; and

(6) when clinically indicated or upon request of individuals who witnessed the restraint debrief persons who witnessed the restraint.

§415.274. Documenting and Reporting Restraint or Seclusion Initiated in Response to a Behavioral Emergency.

(a) The facility must document the assessment, monitoring, and evaluation of an individual in restraint or seclusion on a facility approved form. Documentation in an individual's medical record must include:

(1) the time the intervention began and ended;

(2) the name, title, and credentials of any staff members present at the initiation of the intervention;

(3) the time and results of any assessments or evaluations;

(4) the physician's documentation in specific medical or behavioral terms of:

(A) the necessity of the order, and

(B) other generally accepted, less intrusive forms of intervention, if any, that the physician evaluated but rejected, and the reasons those interventions were rejected;

(5) he use of specific alternatives and less restrictive interventions, including preventive or de-escalative interventions, which were attempted before the initiation of restraint or seclusion, and the individual's response to these interventions; and

(6) the individual's response to the use of restraint or seclusion.

(b) Staff members must report daily to the CEO or designee each use of an involuntary intervention.

(1) The CEO or designee must take appropriate action to identify and correct unusual or unwarranted utilization patterns.

(2) The CEO or designee shall maintain a central file containing the following information:

(A) age, gender, and race of the individual;

(B) deaths or injuries to the individual or staff members;

(C) length of time the intervention was used;

(D) type of intervention, including each type of restraint used;

(E) name of staff members who were present for the initiation of the intervention; and

(F) date, day of the week, and time the intervention was initiated.

(c) The facility must any death that occurs while an individual is restrained or secluded for a behavioral emergency or when it is reasonable to assume that an individual's death is the a result of restraint or seclusion.

(1) Medicare- or Medicaid-certified facilities must report the death to the Center for Medicare and Medicaid Services regional office by the next business day following the individual's death.

(2) Facilities that are neither Medicare- nor Medicaid-certified must report the death to the Office of the Medical Director, Texas Department of Mental Health and Mental Retardation, by the next business day following the individual's death.

(3) The Children's Health Act of 2000 and federal regulations promulgated pursuant to the Act contain additional reporting requirements for facilities that are subject to its requirements.

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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25 TAC §415.262

The rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in private mental health facilities, community-based crisis stabilization services, and crisis residential services; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

§415.262. Initiating Restraint or Seclusion in a Behavioral Emergency.

(a) Initiation.

(1) Only authorized staff who have demonstrated competency in the facility's restraint and seclusion training program may initiate personal restraint in a behavioral emergency.

(2) Only a physician or clinically competent registered nurse may initiate mechanical restraint or seclusion.

(b) Physician's order. Only a physician member of the facility's medical staff may order restraint or seclusion.

(1) The physician's order for restraint or seclusion must:

(A) designate the specific intervention and procedures authorized, including any specific measures for ensuring the individual's safety, health, and well-being;

(B) specify the date, time of day, and maximum length of time the intervention and procedures may be used;

(C) describe the specific behaviors which constituted the emergency which resulted in the need for restraint or seclusion;

(D) describe the specific release behaviors that the individual must demonstrate before the restraint or seclusion will be discontinued; and

(E) be signed, timed, and dated by the physician or the registered nurse who accepted the prescribing physician's telephone order.

(2) If restraint or seclusion was ordered by telephone, the ordering physician must personally sign, time, and date the telephone order within 24 hours of the time the order was originally issued.

(3) If the physician who ordered the intervention is not the treating physician, the physician ordering the intervention must consult with the treating physician or physician designee as soon as possible. The physician who ordered the intervention must document the consultation in the individual's medical record.

(c) Face-to-face evaluation.

(1) A physician must conduct a face-to-face evaluation of the individual following the initiation of restraint or seclusion to personally verify the need for restraint or seclusion and to approve its continuation, if indicated.

(A) The face-to-face evaluation must be conducted within one hour following the initiation of restraint or seclusion in a facility other than Waco Center for Youth.

(B) The face-to-face evaluation must be conducted within two hours following the initiation of restraint or seclusion at Waco Center for Youth unless the individual is released prior to the expiration of the original order. If the individual is released prior to the expiration of the original order, the physician must conduct the face-to-face evaluation within 24 hours.

(2) A physician may delegate the face-to-face evaluation to a staff person:

(A) who is under the clinical supervision of a physician appointed to the medical staff and who is privileged to practice in the facility or that portion of the facility to which this subchapter applies; and

(B) who is a physician assistant or an advanced practice nurse appointed to the medical staff and privileged to practice in the facility or that portion of the facility to which this subchapter applies.

(3) A physician who delegates the face-to-face evaluation following the initiation of restraint or seclusion must ensure that the follow-up conduct a face-to-face evaluation of the individual is conducted by either the delegating physician or by another physician appointed to the facility medical staff as soon as possible and not later than 24 hours following the initiation of the restraint or seclusion.

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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DIVISION 3. RESTRAINT DURING CERTAIN PROCEDURES

25 TAC §415.285

This rule is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in private mental health facilities, community-based crisis stabilization services, and crisis residential services; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

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DIVISION 4. PROCEDURES THAT ARE NOT RESTRAINT OR SECLUSION

25 TAC §§415.290 - 415.292

The rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in private mental health facilities, community-based crisis stabilization services, and crisis residential services; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

§415.292. Protective and Supportive Devices.

(a) Voluntary use of protective and supportive devices. A protective or supportive device that is easily removable by the individual without staff assistance is not restraint.

(1) A protective or supportive device is used with the consent of the individual.

(2) A supportive device must allow greater freedom of mobility than would be possible without the use of the device.

(3) A physician, physician's assistant, or advanced practice nurse must order the use of a protective or supportive device prior to its use. If the order is given by physician's assistant or advanced practice nurse, the use of the protective or supportive device must have been anticipated in the individual's treatment plan and the physician must countersign the order within 24 hours.

(4) The individual's treatment team must include an occupational or physical therapist and the individualized treatment plan must specify that a protective or supportive device is to be used and must:

(A) include any special considerations for the use of the device based on the findings of the comprehensive initial assessment performed at admission or intake;

(B) include an outcome oriented goal;

(C) describe the specific type of device that is used;

(D) specify who is responsible for applying the device;

(E) describe the plan for monitoring the individual; and

(F) reflect assessment, intervention, and evaluation on an ongoing basis.

(5) The facility must have written policies and procedures that address the proper implementation and monitoring of protective and supportive devices in accordance with this subchapter.

(b) Involuntary use of protective and supportive devices. A protective or supportive device that is not easily removable by the individual without staff assistance is restraint, and the provisions of this subchapter relating to mechanical restraint apply and must be followed.

(c) Protective devices for wound healing. After a wound has healed, the continued use of a protective device is considered a mechanical restraint and the provisions of this subchapter relating to mechanical restraint apply and must be followed.

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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DIVISION 5. REFERENCES AND DISTRIBUTION

25 TAC §415.299, §415.300

The rules are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; THSC, §571.006, which provides the board with the authority to adopt rules as necessary for the proper and efficient treatment or persons with mental illness; THSC, §577.010, which provides the board with the authority to adopt rules and standards for the proper care and treatment of patients in private mental health facilities, community-based crisis stabilization services, and crisis residential services; THSC, §534.052(a), which provides the board with the authority to adopt rules and standards necessary to ensure adequate provision of community-based mental health services through the local mental health authority; and THSC, §576.024, concerning use of physical restraint.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §21.1007

The Commissioner of Insurance adopts amendments to §21.1007, concerning restrictions on the use of underwriting guidelines based on previous mold damage, mold damage claims, a water damage claim, or appliance-related claims. The amendments are adopted with changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8805).

The amendments to §21.1007 are necessary to implement Article 1 of Senate Bill (SB) 127, enacted by the 78th Legislature, that added new Article 5.35-4 to the Insurance Code and House Bill (HB) 329, enacted by the 78th Legislature, that added new Article 21.21-11 to the Insurance Code and requires the department to promulgate a Certificate of Mold Remediation pursuant to the Occupations Code §1958.154. The adopted amendments are necessary as it has come to the attention of the legislature and the department that certain insurance companies are declining to write residential property insurance based on the existence of previous mold damage or the filing of mold damage or water damage claims. The department believes that the apparent motivation for the use of water or mold damage claim history in underwriting is to offset losses resulting from mold damage claims and to avoid future claims for water and mold damage. The legislature and the department believe that certain underwriting decisions based on previous mold damage or mold damage claims that have been properly remediated or a water damage claim or an appliance-related claim are unfair and should be prohibited. Furthermore, declining to write residential property insurance based solely on previous mold damage or a mold or water damage claim or an appliance-related claim is unfair to consumers who may be offered policies that have greatly reduced water damage and mold damage coverage from that contained in the policies previously offered. These policies with the reduced water and mold damage coverage no longer expose insurers to the broad water and mold damage coverage that they were previously required to offer under the promulgated policies. Since the insurers' water and mold damage exposure may be significantly reduced, it is unfair for insurers to continue to use previous mold damage or a single mold or water damage claim underwriting guideline when they have little or no water or mold damage exposure. Additionally, declining to write residential property insurance based solely on previous mold damage or a prior claim for mold or water damage or an appliance-related claim, regardless of the type of policy being offered, is unfair to consumers because, instead of underwriting each home based on the actual condition of the property, this practice unfairly denies coverage to a broad class of homes and applicants. While previous mold damage or a mold damage or a water damage claim or an appliance-related claim may be an indication to an insurer that further underwriting investigation is needed, the sole use of these factors to decline to write a risk is unfair to consumers because many insurable risks may be excluded by the use of such overly broad underwriting guidelines without considering other underwriting factors. The department made changes to the rule based on comments and for clarification. Specifically, the department changed the last sentence of the definition of appliance-related claim in subsection (b)(5) to provide that an appliance-related claim does not include the failure of an external attachment used to transport water to or from the plumbing system and also changed subsection (d)(2) of the rule to add language noting that appliance-related losses are a special class of non-weather related losses and that the notice in this regard must be specific to the insured's appliance-related loss history. The department added a new paragraph (4) to subsection (d) of the rule and renumbered the remaining paragraphs to clarify that an insurer may not reject or challenge a certification by an inspector not on an insurer's list unless the insurer re-inspects the property and specifies in writing the areas of deficiency to the consumer and maintains supporting documentation. The department changed subsection (d)(8) of the rule, formerly (d)(7), to specify that information on, rather than a list of, who may inspect and certify the proper remediation of an appliance-related claim may be obtained from the department. The department changed "underwriting decision" to "underwriting guideline" in subsection (e)(1) of the rule which by definition only applies to an applicant for insurance and further changed subsection (e)(1) to clarify that an insurer shall not use an underwriting guideline based upon previous mold damage or a prior mold damage claim filed either by the applicant or on the covered property. The department also

added a paragraph (3) to subsection (e) to clarify that nothing contained in that subsection shall preclude an insurer from the surcharge and renewal provisions of Article 21.49-2B, Section 7. Further for clarification, the department added a reference to Article 5.35-4(3)(c) in subsection (d)(1) of the rule and also changed subsection (g) of the rule to delete the reference to subsection (d).

The adopted amendments to subsection (a) of §21.1007 state that the purpose of the section is to protect persons and property from being unfairly stigmatized by insurers providing residential property insurance to the person or property that had previous mold damage or has filed mold damage claims, a water damage claim, or certain appliance-related claims, under a residential property insurance policy. The adopted amendments to subsection (b) amend the definitions of residential property and underwriting guideline to conform to new statutory definitions and add new definitions for the terms insurer, appliance-related claim, and water damage claim. The adopted amendments to subsection (c) clarify the restrictions on an insurer's use of underwriting guidelines based solely upon a single prior water damage claim filed either by the applicant or on the covered property. The amendment to subsection (d) deletes the language "Nothing contained herein shall preclude an insurer from the surcharge and renewal provisions of Article 21.49-2B, Section 7" and adds this as new language to subsection (c) where the provision is applicable. Additionally, the amendment to subsection (d) adds new language to provide the restrictions on underwriting and rating and the requirements for the inspection and certification process of appliance-related claims. Adopted new subsection (e) implements the restrictions in new Article 21.21-11 on the use of previous mold damage or a claim for mold damage in underwriting residential property insurance. New subsection (f) provides the filing requirements for underwriting guidelines relating to previous mold damage, mold damage claims, and water damage claims. New subsection (g) specifies that subsection (c) applies only to residential property insurance policies that are delivered or issued for delivery after the effective date of this section.

Comment: Two commenters stated that SB 127 and HB 329 contain concepts that overlap and potentially conflict with each other. The commenters urged the department to recognize these conflicts and to provide regulatory guidance that reflects a consistent and logical approach to implementing these laws. The commenters observed that the department is interpreting these laws to prohibit an insurer from making an underwriting determination based on an unlimited number of mold claims, as long as proper remediation has taken place. The commenters believe that this interpretation is inconsistent with authorizing legislation which contains no prohibitions on non-renewing existing business. One commenter pointed out that since underwriting guidelines are required to be filed, it is important to interpret the legislation to provide reasonable guidance. Another commenter noted that the legislature has given the commissioner broad authority to reconcile and harmonize the statutes so insurers can know what they can and cannot underwrite.

Agency Response: The department notes that the restrictions on the use of underwriting guidelines based on previous mold damage, mold damage claims or water damage claims, and appliance-related claims are based on the specific authority granted to the commissioner by Articles 5.35-4 and 21.21-11. The department also believes that HB 329 clearly provides that insurers shall not make an underwriting decision based on mold claims that have been properly remediated and certified; however, the department has changed "underwriting decision" to "underwriting guideline" which by definition only applies to an applicant for insurance. Additionally, the department has added subsection (e)(3) to clarify that nothing contained in that subsection shall preclude an insurer from the surcharge and renewal provisions of Article 21.49-2B, Section 7. The department believes that insurers may adequately address concerns relating to the exposure of insuring applicants with a number of mold claims through rating. Rates must be based on sound actuarial principles related to actual or anticipated loss experience.

Comment: Two commenters requested clarification that proposed §21.1007(e) apply to underwriting the property that is the subject of an application and not to the claims history of the individual applicant. One commenter stated that HB 329 applies only to property and that there is a need to distinguish a properly remediated claim from an applicant that has two or three prior mold claims in his abode. The commenter urged that the department find that HB 329 applies only to property or to adopt the mold rules to apply under the same rules as for water damage claims. In contrast, another commenter stated the belief that the statute applies both to property and applicant and further reads the rule as applying to both, but will assist with language to clarify that the rule applies to both person and property.

Agency Response: The department disagrees with some of the commenters' interpretation of the application of subsection (e), and the department has changed subsection (e) to clarify that an insurer shall not use an underwriting guideline based upon previous mold damage or a prior mold damage claim filed either by the applicant or on the covered property.

Comment: One commenter believes that the proposed rule improperly restricts an insurer's ability to charge rates based on prior water damage or mold damage claims.

Agency Response: The department's interpretation of the definition of underwriting guidelines would not place restrictions on an insurer's ability to rate general water damage and mold damage claims based on sound actuarial principles related to actual or anticipated loss experience.

Comment: Two commenters requested that the department develop a regulatory matrix as an interpretive guide to water, appliance, and mold claim underwriting limitations and to recognize the need for multiple inspections for appliance-related water damage claims to satisfy the remediation requirements of SB 127. One commenter also recommended that the department require copies of the relevant licenses to be attached to the various certificates and certifications referenced in the rule to ensure proper certification of the certifying entity.

Agency Response: The department believes that the suggestion of a regulatory matrix is helpful, and the department will consider developing an informative and consumer-friendly guide to reading this rule. With respect to the comment regarding the need for multiple inspections to satisfy the remediation requirements of appliance-related claims for SB 127, the department believes that the inspectors listed in the rule may have the knowledge and experience in the remediation of water damage to inspect and certify the proper remediation of an appliance-related water damage claim. Furthermore, insurers may provide a list of authorized inspectors to the claimant and presumably these authorized inspectors would be adequately trained to perform all

aspects of the appliance-related water damage remediation inspection. The inspection and licensing issues raised by the commenters are relevant; however, the adopted rule establishes a clear framework for the remediation process which may obviate the additional documentation suggested by the commenters. If in the development of the process, more documentation is needed, the rule can be re-evaluated and amendments can be proposed as necessary.

Comment: Some commenters stated that it would be more appropriate to have two or three separate rules because both Chapter 5 and Chapter 21 of the Insurance Code have been amended, and there are many technical differences between the various legislative provisions enabling the proposed rules. Two commenters stated that the proposed rule should be part of Chapter 5 instead of Chapter 21 of the Texas Administrative Code where underwriting and rating are already otherwise addressed. One commenter stated that the activities the proposal seeks to address do not rise to the level of unfair trade practices, which can generally be categorized as dishonest, deceptive or fraudulent. Another commenter said that it should be made clear that the rule only applies to residential property insurance.

Agency Response: The department believes that one rule implementing the underwriting restrictions contained in SB 127 and HB 329 is an efficient and appropriate method of regulation since both pieces of legislation relate to underwriting water-related losses. The department notes that with the enactment of Articles 21.21-11 and 5.35-4, the commissioner was given specific authority to adopt rules concerning restrictions on the use of underwriting guidelines based on previous mold damage, mold damage claims or water damage claims. The retention of the rule in Chapter 21 of the Texas Administrative Code is consistent with this statutory framework. The department also believes that the rule's applicability to residential property insurance is clear on its face.

Comment: Several commenters felt that the definition of "appliance-related claim" should be clarified and further stated that the wording "permanently attached" creates a vague and imprecise guideline. Some commenters wanted to delete the phrase "that are not permanently attached to the appliance" and to note that tubing, hoses, and related clamps are not included based on the belief that these are maintenance items, while another commenter wanted to include "hoses" based on the belief that a hose is commonly considered to be part of an appliance.

Agency Response: The department has changed the last sentence of the definition of "appliance-related claim" to read as follows: "An appliance-related claim shall not include the failure of a plumbing system or an external attachment to the appliance used to transport water to or from the plumbing system." The department believes it is reasonable to exclude losses from this definition that may be maintenance-related.

Comment: Some commenters stated that the effective date language of the proposed rule should be clarified by stating applicability only to claims occurring on or after the effective date of the rule.

Agency Response: The department does not agree that applicability must be based on claims occurring on or after the effective date of the rule based on a clear reading of the authorizing legislation.

Comment: One commenter requested that the proposal clarify that the provisions of SB 127 apply only to policies for which an application was taken on or after the effective date of the act.

Agency Response: The department notes that the rule's requirements for general water damage claims apply to new business only in accordance with subsection (c). Subsection (d) of the rule concerning appliance-related claims applies to both new business and renewals pursuant to Article 5.35-4 §3(c). Thus for clarity, the department has changed subsection (g) of §21.1007 to delete the reference to subsection (d) to specify that the prohibition regarding general water damage claims applies to new business only.

Comment: One commenter stated that the rule should clearly apply to both applicants and existing insureds based on the stated purpose of Article 5.35-4 to protect persons and property from being unfairly stigmatized in obtaining residential property insurance. The commenter states that the use of the word "obtain" is broader than merely "apply" and that it includes obtaining insurance at the initial application as well as obtaining insurance at renewal. The commenter further stated the belief that the words "single" and "solely" no longer apply to water damage claims and should be deleted from the rule. The commenter noted that the legislature has used "solely" where it has deemed it necessary, such as in SB 14 in which "solely" was mentioned relating to the use of credit information, and the same terminology does not appear in SB 127 and HB 329. The commenter further recommended that the department amend the rule so that the prohibition on the use of water damage claims is similar to the new statutory prohibition and requirements associated with mold claims by prohibiting the use of water damage claims as a basis for underwriting if the damage has been inspected and certified that it was repaired properly. The commenter also stated that the reference to Article 21.21 should be in the adopted rule, but should be moved to the end of the rule so as to apply to the rule in its entirety.

Agency Response: The department believes that the amendments to §21.1007 are in accord with the statutory requisites as defined by the legislature and further believes that the adopted rule is an effective balance between the needs of consumers and the requirement to have a sound underwriting process that will increase the availability and affordability of residential property insurance in this state. Specifically, SB 127 defines underwriting guideline in a manner that is specific to accepting or rejecting an application. "Application" is defined as the act of applying or a form used in making a request. The department points out that the prohibition in Article 5.35-4 §3(a) is clearly limited to prospective insureds; however, existing insureds would continue to benefit from the protections of Article 21.49-2B with regard to general water damages claims. Further, the department has retained the use of "solely" and "single" in the adopted amendment and believes that this is consistent with the commissioner's authority to adopt rules to accomplish the purpose of the legislation. The use of the words "solely" and "single" represents an effective balance as it provides for fair treatment to consumers and does not unduly restrict an insurer's ability to underwrite. The department notes that the adopted rule implements the express provisions of HB 329 and SB 127; however, the department does not believe that it is necessary at this time to accept the commenter's recommendation to extend the mold claim prohibitions to the use of water damage claims. Regarding the reference to Article 21.21, the department notes that this reference was deleted in the proposal. The fact that §21.1007 no longer relies on Article 21.21 for its statutory authority does not preclude a consumer from pursuing a private cause of action if they are able to present evidence that the prohibited action is an unfair trade practice defined in section 4 of Article 21.21.

Comment: One commenter stated a concern that the language in the proposed rule allows an insurer to challenge and deny an inspection of an appliance-related claim if that inspection is not done by a person from a list provided by the insurance company. The commenter also states that this is in direct conflict with new statutory language and should be removed. The commenter stated that a problem could occur if an insured does not use an authorized inspector from the list thereby giving an insurer an unfettered right to object. The commenter noted that excepting fraud, impropriety, or something similar, an insurer should not be allowed to object "out-of-hand" to an inspection.

Agency Response: The department does not believe that the rule is in direct conflict with the statutory language. The department believes that the rule provides protections for insureds who select an inspector from an insurer's list by providing that the insurer does not have the right to challenge that certification. By the same token, insurers should also be able to verify the accuracy of an inspection that is performed by an inspector who is not on the insurers' list. In response to the commenter's concerns, the department has added a new paragraph (4) to subsection (d) of the rule and renumbered the remaining paragraphs to provide that if the consumer has an inspection and certification performed by an inspector who is not on a list provided by the insurer, the insurer may not reject or challenge the certification unless the insurer re-inspects the property and specifies in writing the areas of deficiency to the consumer. The new paragraph further provides that an insurer that re-inspects the property shall maintain all documentation, including documentation that supports the areas of deficiency identified by the inspection and specified in writing to the consumer. If the department learns of abuses in this regard, appropriate action will be considered, including further amendments to the rule.

Comment: One commenter noted that there should be clarification in the rule regarding the appliance-related claims and non-renewal requirements. The commenter stated that the legislature intended to separate appliance-related claims from other non-weather-related claims for the purposes of Insurance Code, Article 21.49-2B and will work with the department to address this situation, including work on appropriate notice language.

Agency Response: The department agrees that to the extent the legislation provides a prohibition against using less than three remediated appliance-related claims in underwriting, it appears that the legislation contemplates a distinction between appliance-related and other non-weather-related claims. Thus, the department has changed subsection (d)(2) of §21.1007 to add language noting that appliance-related losses are a special class of non-weather related losses and that the notice in this regard must be specific to the insured's appliance-related loss history.

Comment: A commenter pointed out that subsection (d)(1) of §21.1007 should for clarity refer to subsections 3(c) and (d) of Article 5.35-4 of the Insurance Code when referring to consumer requirements for compliance.

Agency Response: The department agrees and has changed subsection (d)(1) accordingly.

For with changes: Travelers Property Casualty; Texas Association of Realtors; Nationwide Insurance and Financial Services; Office of Public Insurance Counsel; American Insurance Association; and United Services Automobile Association.

The amended section is adopted pursuant to the Insurance Code Articles 5.35-4, 21.21-11 and §36.001 and §1958.154 of the Occupations Code. The Insurance Code Article 5.35-4 provides that the Commissioner of Insurance shall adopt rules to accomplish the purposes of the article, including rules with regard to the definition of water damage claim. Article 21.21-11 §4 provides that the Commissioner shall adopt rules as necessary to implement this article. Section 1958.154 (d) of the Occupations Code provides that the Commissioner of Insurance shall adopt rules describing the information that must be provided in the certificate of mold remediation. Further, the certificate must be designed to comply with the requirements imposed under Article 21.21-11 of the Insurance Code. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.1007. Restrictions on the Use of Underwriting Guidelines Based On a Water Damage Claim(s), Previous Mold Damage or a Mold Damage Claim(s).

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by previous mold damage or by the filing of mold damage claims, a water damage claim, or certain appliance-related claims, under a residential property insurance policy.

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

(1) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(2) Underwriting guideline--A rule, standard, guideline, or practice; whether written, oral, or electronic; that is used by an insurer or an agent of an insurer to decide whether to accept or reject an application for a residential property insurance policy or to determine how to classify the risks that are accepted for the purpose of determining a rate.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by Section 2, Article 21.49-1 or Section 823.003 of the Insurance Code if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Chapter 981.

(5) Appliance-related claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance. An appliance includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals. An appliance-related claim shall not include the failure of a plumbing system or an external attachment to the appliance used to transport water to or from the plumbing system.

(6) Water damage claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

(c) Restrictions on the use of a water damage claim in underwriting. An insurer shall not use an underwriting guideline based solely upon a single prior water damage claim either filed by the applicant or on the covered property. Nothing contained herein shall preclude an insurer from the surcharge and renewal provisions of Article 21.49-2B, Section 7.

(d) Restrictions on underwriting and rating and the inspection and certification process of appliance-related claims.

(1) Except as provided in Article 5.35-4 subsection 3(e) of the Insurance Code, an insurer shall not use a prior appliance-related claim as a basis for determining a rate to be paid or for determining whether to issue, renew, or cancel a residential property insurance policy if the consumer complies with the requirements specified in Article 5.35-4 subsections 3(c) and 3(d) of the Insurance Code. It is the consumer's option whether to have the appliance-related claim inspected and certified, however, it is the consumer's responsibility to bear the cost of such inspection and certification. An appliance-related claim that is not inspected and certified shall be subject to the provisions contained in subsection (c) of this section.

(2) Nothing contained in subsection (d) of this section shall exempt an insurer from the notice provisions contained in Article 21.49-2B §7(d). However, appliance-related losses are a special class of non-weather related losses and the notice must be specific to the insured's appliance-related loss history.

(3) The following individuals who hold one or more of the following licenses are inspectors that may have the knowledge and experience in the remediation of water damage to inspect and certify the proper remediation of an appliance-related claim:

(A) inspectors licensed or certified through the Voluntary Inspection Program pursuant to Article 5.33B of the Insurance Code;

(B) persons licensed to perform real estate property inspections under the Real Estate Licensing Act;

(C) persons licensed as assessors or remediators by the Texas Board of Health pursuant to Chapter 1958 of the Occupations Code;

(D) licensed Texas Professional Engineers.

(4) If the consumer has an inspection and certification performed by an inspector under paragraph (3) of this subsection who is not on a list provided by the insurer, the insurer may not reject or challenge the certification unless the insurer re-inspects the property and specifies in writing the areas of deficiency to the consumer. An insurer that re-inspects the property shall maintain all documentation, including documentation that supports the areas of deficiency identified by the inspection and specified in writing to the consumer.

(5) Inspectors shall also include persons who are authorized by insurers to perform appliance-related water damage remediation inspections. An insurer who provides a list of inspectors authorized by the insurer must give verbal notice to any claimant at the time of the claimant's phone call reporting the claim and written notice to the claimant within 15 days of receiving notice of the claim that the claimant has the right to select the inspector including the right to choose an inspector who is not on the insurer's list who will perform the inspection of the appliance-related water damage remediation. If the consumer has the inspection and certification performed by an inspector from the list of inspectors authorized by the insurer then the insurer does not have the right to reject or challenge the certification.

(6) If the inspector determines by a physical inspection of the residential property that the appliance-related water damage has been properly remediated, the inspector shall issue within 10 days of the completion of the inspection a Certificate of Appliance-Related Water Damage Remediation (WDR-1).

(7) The Certificate of Appliance-Related Water Damage Remediation (WDR-1) is a form that is prescribed by the Department for use by inspectors who will provide certifications. This form may be obtained from the Texas Department of Insurance website http://www.tdi.state.tx.us or by requesting such form from the Automobile/Homeowners Section, MC 104-PC, Texas Department of Insurance, P. O. Box 149104, Austin, Texas, 78714-9104.

(8) Information regarding inspectors that may have the knowledge and experience in the remediation of water damage to inspect and certify the proper remediation of an appliance-related claim may be obtained from the Texas Department of Insurance website or by requesting such information from the Automobile/Homeowners Section.

(e) Restrictions on the use of previous mold damage or a claim for mold damage in underwriting residential property insurance.

(1) An insurer shall not use an underwriting guideline regarding a residential property insurance policy based upon previous mold damage or a prior mold damage claim filed either by the applicant or on the covered property if:

(A) the applicant for insurance has property that is eligible for residential property insurance coverage;

(B) the property has had mold damage;

(C) mold remediation has been performed on the property; and

(D) the property was:

(i) remediated in accordance with the requirements specified in Chapter 1958, Subchapter D of the Occupations Code and any applicable rules promulgated by the Texas Board of Health pursuant to Chapter 1958 of the Occupations Code; and a Certificate of Mold Damage Remediation (MDR-1) is issued to the property owner under Section 1958.154 of the Occupations Code, which certifies that the underlying cause or causes of the mold at the property have been remediated; or

(ii) inspected by an independent mold assessor or adjuster, who is licensed to perform mold assessment in accordance with rules promulgated by the Texas Board of Health under Chapter 1958 of the Occupations Code, and the independent mold assessor or adjuster provides to the property owner written certification on a Certificate of Mold Damage Remediation (MDR-1) that based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) The Certificate of Mold Damage Remediation (MDR-1) is a form that is prescribed by the Department for use by mold remediators, assessors, and adjusters who will provide certifications. This form may be obtained from the Texas Department of Insurance website http://www.tdi.state.tx.us or by requesting such form from the Automobile/Homeowners Section or from the Texas Department of Health.

(3) Nothing contained herein shall preclude an insurer from the surcharge and renewal provisions of Article 21.49-2B, Section 7.

(f) Filing requirements for underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims.

(1) All underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims shall be filed with the Department and shall comply with the requirements contained in this section and with any rules relating to underwriting guidelines that may be adopted by the Commissioner.

(2) Underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims shall be submitted to the Texas Department of Insurance, Property and Casualty Intake Unit, Mail Code 104-3B, P. O. Box 149104, Austin, Texas, 78714-9104 or to the Texas Department of Insurance, Property and Casualty Intake Unit, 333 Guadalupe Street, Austin, Texas 78701.

(g) Subsection (c) of this section applies only to a residential property insurance policy that is delivered or issued for delivery based on an application that is submitted on or after the effective date of this section.

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 December 12, 2003.

TRD-200308561
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 1, 2004
Proposal publication date: October 10, 2003
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.78

The Texas Parks and Wildlife Commission adopts an amendment to §65.78, concerning the Statewide Hunting and Fishing Proclamation, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8302).

The crab resources in Texas support valuable sport and commercial fisheries. Over six million pounds are harvested annually with a dockside value of $4.0 million. The crab fishery is managed using guidelines in the Crab Fishery Management Plan (FMP) adopted by the Parks and Wildlife Commission in 1992. That FMP noted concerns about abandoned crab traps. Senate Bill 1410, enacted by the 77th Texas Legislature, provided the commission with the authority to establish a season closed on the use of crab traps for the purpose of removing abandoned crab traps. The legislation authorizes the commission to create a closed season lasting a minimum of 10 days to a maximum of 30 days beginning no earlier than January 31st and ending no later than April 1st during any year of a closure. Senate Bill 607 from the 78th Texas Legislature, in regular session, declared "abandoned" any crab trap in public waters beginning the first day of a closed season.

Based on review of last two years of closure, and through consultation with the Crab Advisory Committee, the department proposed a closure to occur each year on the third Friday in February and continuing for 10 consecutive days. The commercial crab trap season then reopens, allowing the placement and/or use of crab traps in public waters.

The rule will function by establishing a 10-day closed season for crab traps, allowing the detection and removal of abandoned crab traps.

One commenter requested that if the closed season is to be implemented, the requirement of a degradable escape panel be eliminated, or that the requirement be changed to allow the use of coat-hanger wire for degradable panels. Although the rulemaking does not contemplate changes to gear requirements, the department disagrees with the comment and responds that the purpose of the degradable escape panel is to ensure that abandoned, misplaced, or forgotten crab traps do not continue to function, which leads to the waste of marine resources that are caught in them. Because the crab season closure cannot be expected to result in the removal of all abandoned crab traps, there is a high probability that if there were no degradable-panel requirement there would be an unnecessary increase in marine organism mortalities. The agency also disagrees with the comment concerning coat-hanger wire, and responds that a specified maximum wire thickness (for maximum suitability for quick degradation, based on research data) is preferable to the subjective interpretation of a generic term such as 'coat-hanger wire.' Because coat hangers differ widely in size and are often coated or painted, their degradability rate is an issue. No changes were made as a result of the comments.

The department received four comments opposing adoption of the rule on the basis that crabbers are in perilous economic circumstances because last year's closure caused crabbers to miss the spring crab run and the summer crab run was then ruined by a hurricane. The commenters recommended skipping or eliminating the closure, or changing the dates. The department, while sympathetic, responds that the dates for the season closure were selected on the basis of long-term data indicating that the harvest is at its lowest point of the year at that time. Thus, on the basis of that data, the department believes that skipping or eliminating the annual closure will not result in either the recoupment of losses or appreciable economic gain, especially relative to the conservation gain that is the goal of the closure. No changes were made as a result of the comment.

One commenter stated that it takes too much time to remove and replace traps in response to the closure. The department disagrees and responds that traps must be moved, removed, or replaced periodically anyway, and that specifying a time period when they must be removed does not impose an onerous burden on crabbers. No changes were made as a result of the comment.

One commenter stated that if crabbing was allowed by the Nature Conservancy in the Mad Island area, the season closure

would not be as devastating. The department disagrees that the closure is 'devastating,' and responds that data indicate that the closure occurs at the historical low point of the harvest, which should not impose significant hardship on crabbers. No changes were made as a result of the comment.

The department received four comments in support of adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §78.115, which authorizes the commission to establish by rule a closed season for the use of crab traps in the public water of Texas, and requires that the closed season be not less than ten days or more than 30 days between January 31 and April 1 in years designated by the commission.

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 December 8, 2003.

TRD-200308444
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: December 28, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.107

The Comptroller of Public Accounts adopts amended rule §9.107, concerning appraised value limitation and tax credit for certain qualified property, without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8820).

The amendment is adopted to amend model application forms referenced in subsection (c)(1) to remove request for information that is confidential by the Public Information Act and to correct typographical errors on the application forms: Application For Appraised Value Limitation On Qualified Property (Form 50-296); and Application For Tax Credit On Qualified Property (Form 50-300).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §313.031(a), which requires the comptroller to adopt rules and forms necessary for the implementation and administration of the provisions of Tax Code, Chapter 313.

The amendment implements Tax Code, Chapter 313.

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 December 10, 2003.

TRD-200308460
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: December 30, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 475-0387

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §63.19

The Employees Retirement System of Texas (ERS) adopts new §63.19 concerning Standard of Conduct for Financial Advisors and Service Providers, without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9718).

Section 63.19 is being adopted in accordance with Texas Government Code §2263.004 (as added by Act of June 1, 2003, 78th Leg. R.S., ch. 932, §2). New §63.19 clarifies the requirement that all financial advisors and service providers must comply with applicable standards of conduct. Noncompliance could result in termination of the business relationship.

No comments were received on this section.

This new section is adopted under Texas Government Code §2263.004(a), which authorizes the ERS Board of Trustees to enact this rule establishing standards of conduct for financial advisors and service providers involved in ERS' investment activities, as well as Texas Government Code §815.102(2) and (4), which authorize the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and for the transaction of any other business of the board.

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 December 11, 2003.

TRD-200308516
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: December 31, 2003
Proposal publication date: November 7, 2003
For further information, please call: (512) 867-7125

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CHAPTER 71. CREDITABLE SERVICE

34 TAC §71.2

The Employees Retirement System of Texas (ERS) adopts new §71.2, concerning a membership waiting period without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9718). The text will not be republished.

The new section is necessary pursuant to House Bill 2359, Acts of the 78th Legislature, Regular Session, which established a 90-day waiting period for membership in the employee class. The new section is needed to enable ERS to implement recent legislation in a manner consistent with trust fund plan documents.

New §71.2 delineates that state employees or office holders are subject to the waiting period during the 2004/2005 biennium. It states that the waiting period begins on the first day of employment or office holding and ends after 90 consecutive days. Membership in the employee class begins on the 91st day. Contributions for membership service in the employee class begin on the first day of the calendar month following completion of the 90-day waiting period. Membership service from the 91st day until contributions begin is considered membership service not previously established and shall be established as provided in §71.14.

ERS received no comments regarding the new section.

The new section is adopted under Texas Government Code, §815.102, which authorizes the Board of Trustees to adopt rules for eligibility of membership and Texas Government Code, §813.514, which authorizes the Board of Trustees to adopt rules to administer the credit purchase option, including rules that impose restrictions on the application of the statutes as necessary to cost-effectively administer the statute.

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 December 11, 2003.

TRD-200308515
Paula A. Jones
General Counsel
Employees Retirement System of Texas
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Proposal publication date: November 7, 2003
For further information, please call: (512) 867-7125

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34 TAC §71.19

The Employees Retirement System of Texas (ERS) adopts an amendment to §71.19, concerning the purchase of refunded service and the transfer of such service between the Teacher Retirement System of Texas (TRS) and ERS without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9719). The text will not be republished.

The amendment to §71.19 is needed to update the rules pursuant to House Bill 2359, Acts of the 78th Legislature, Regular Session, which repealed Texas Government Code, §805.002(e), regarding eligibility to purchase refunded service. Specifically, repealed §805.002(e) required that service credit that was canceled by a termination of membership that occurred after August 31, 1993, may be reinstated only by a member of the system in which the service is creditable. Section 71.19 has been amended to remove this requirement.

ERS received no comments regarding the amended section.

The amended section is adopted under Texas Government Code, §805.009, which authorizes the Board of Trustees to adopt rules for the administration of Chapter 805.

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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34 TAC §71.25

The Employees Retirement System of Texas (ERS) adopts the repeal of §71.25, pertaining to eligibility for service credit previously canceled as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9720). The repeal is adopted without changes and the text of the repealed rule will not be published.

Section 71.25 is repealed to update the rules pursuant to House Bill 2359, Acts of the 78th Legislature, Regular Session, which repealed Texas Government Code, §813.504(b), regarding eligibility for service credit previously canceled. Section 813.504(b) allowed a former member of the employee class who does not receive a disability retirement annuity from the system but who presents satisfactory evidence that the person is disabled may reestablish service credit previously canceled in the system for the purpose of retiring with a service retirement annuity.

Section 71.25 required a lump sum payment to reestablish this service credit and additionally defined the effective date of a service retirement under §813.504(b).

ERS received no comments regarding the repeal of this rule.

The repeal is adopted under Texas Government Code, §815.102, which provides authorization for the Board of Trustees to adopt rules for the administration of funds of the retirement system and the transaction of any other business of the board.

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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For further information, please call: (512) 867-7125

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CHAPTER 73. BENEFITS

34 TAC §73.33, §73.41

The Employees Retirement System of Texas (ERS) adopts the repeal of §73.33 and §73.41, pertaining to a retirement incentive for the employee class and a privatization or other reduction in workforce temporary service retirement option, respectively, as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9720). The repeal is adopted without changes and the text of the repealed rule will not be published.

Section 73.33 is repealed to update the rules pursuant to the expiration of Texas Government Code, §814.1051, which concerned a retirement incentive pursuant to Acts of the 73rd Legislature, and which expired on September 1, 1995.

Section 73.41 is repealed to update the rules pursuant House Bill 2359, Acts of the 78th Legislature, Regular Session, which repealed Texas Government Code, §814.1041, which concerned a temporary service retirement option for members affected by privatization or other reduction in workforce.

ERS received no comments regarding the repeal of these rules.

The repeals are adopted under Texas Government Code, §815.102, which provides authorization for the Board of Trustees to adopt rules for the administration of funds of the retirement system and the transaction of any other business of the board.

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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General Counsel
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For further information, please call: (512) 867-7125

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34 TAC §73.35

The Employees Retirement System of Texas (ERS) adopts an amendment to §73.35, concerning the supplemental payment without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9721). The text will not be republished.

The amendment to §73.35 is needed to update the rules pursuant to House Bill 2359, Acts of the 78th Legislature, Regular Session, which states that the retirement system may make a supplemental payment provided such payments comply with Texas Government Code, §811.006, and additionally specifies that the Board shall determine the amount, timing, and manner of a supplemental payment.

Section 73.35 is amended to reflect these changes, and will function as the guideline for any future supplemental payments.

ERS received no comments regarding the amended section.

The amended section is adopted under Texas Government Code, §815.102, which provides authorization for the Board of Trustees to adopt rules for the administration of funds of the retirement system and the transaction of any other business of the board.

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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General Counsel
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For further information, please call: (512) 867-7125

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CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §75.1

The Employees Retirement System of Texas (ERS) adopts an amendment to §75.1, concerning the eligibility for death benefits of survivors of certain chaplains and of members of an organized fire fighting unit without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9721). The text will not be republished.

The amendment to §75.1 is needed to update the rules pursuant to Senate Bill 482, Acts of the 78th Legislature, Regular Session, that amended Texas Government Code, Chapter 615, and added eligible survivors of Chaplains who are formally designated or employed by an organized volunteer fire fighting unit, a law enforcement agency, or the Texas Department of Criminal Justice.

The amendment to §75.1 is also updated pursuant to House Bill 2359, Acts of the 78th Legislature, Regular Session, that amended Texas Government Code, Chapter 615, which removed the requirement than an organized volunteer fire fighting unit had to have at least 20 members for a survivor to meet eligibility requirements.

ERS received no comments regarding the amended section.

The amended section is adopted under Texas Government Code, §615.002, which provides authorization for the Board of Trustees to adopt rules for the administration of Chapter 615 benefits.

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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CHAPTER 77. JUDICIAL RETIREMENT

34 TAC §77.11

The Employees Retirement System of Texas (ERS) adopts an amendment to §77.11, concerning retirement eligibility and reduction factors for age and retirement options - Judicial Retirement System of Texas Plan Two (JRS-II) without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9723). The text will not be republished.

The amendment to §77.11 is needed to update the rules pursuant to House Bill 820, Acts of the 78th Legislature, Regular Session, which changed retirement eligibility for those with at least 20 years of service credit to include the age requirement of at least 55 years old; and added a category for appellate judges who have served at least two full terms on an appellate court and the member's age and length of service equals or exceeds the number 70.

Section 77.11 is amended to remove a reference to 25 or more years of service credit when calculating an unreduced death benefit annuity for a member dying before reaching age 65.

ERS received no comments regarding the amended section.

The amended section is adopted under Texas Government Code, §840.002, which provides authorization for the Board of Trustees to adopt rules for the administration of the judicial retirement system.

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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Paula A. Jones
General Counsel
Employees Retirement System of Texas
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Proposal publication date: November 7, 2003
For further information, please call: (512) 867-7125

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34 TAC §77.15

The Employees Retirement System of Texas (ERS) adopts an amendment to §77.15 concerning the Judicial Retirement System of Texas Plan One and Two (JRS-I & II) and the establishment of calendar year service credit without changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9723). The text will not be republished.

The amendment to §77.15 is needed to clarify the rules pursuant to Senate Bill 372, Acts of the 77th Legislature, Regular Session, that provided for the establishment of calendar year service credit for members of JRS-I and JRS-II.

Section 77.15 is amended to add clarifying language that calendar year service credit may be established in accordance with the provisions of §77.15.

ERS received no comments regarding the amended section.

The amended section is adopted under Texas Government Code, §835.002 and §840.002, which provide authorization for the Board of Trustees to adopt rules for the administration of the judicial retirement systems.

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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Employees Retirement System of Texas
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CHAPTER 81. INSURANCE

34 TAC §§81.1, 81.3, 81.5, 81.7, 81.9, 81.11

The Employees Retirement System of Texas (ERS) adopts amendments to Sections 81.1, 81.3, 81.5, 81.7, 81.9, and 81.11 concerning definitions, administration, eligibility, enrollment and participation, grievance procedure, and termination of coverage. Sections 81.1, 81.5, and 81.7 are adopted with changes to the text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9725). Sections 81.3, 81.9, and 81.11 are adopted without changes and the text will not be republished.

Sections 81.1, 81.3, 81.5, 81.7, and 81.11 are adopted to update the rules to conform to changes in the Texas Insurance Code, Chapter 1551, pursuant to Acts of the 77th and 78th Legislature, Regular Session, that codified the Texas Employees Uniform Group Insurance Act into the Texas Employees Group Benefits Act under Chapter 1551.

Sections 81.1, 81.5, and 81.7 are also adopted to comply with and conform to Senate Bill 1370, Acts of the 78th Legislature, Regular Session, related to changes under the Texas Insurance Code, Chapter 1551. Further, section 81.5(c)(3) is adopted to comply with and conform to House Bill 7, Acts of the 78th Legislature, Third Called Session, related to interim insurance coverage for certain retirees.

Section 81.9 is adopted to comply with and conform to House Bill 2359, Acts of the 78th Legislature, Regular Session, related to appeals involving the type or scope of benefits based on the plan design under the Texas Insurance Code, Chapter 1551.

The amendment to §81.1 is needed to update the rules to conform to changes in citations in the Texas Insurance Code, Chapter 1551. In addition, the definition of basic plan in §81.1(7) is adopted with changes. The Board adopted the definition with changes to the published text to further clarify the definition to comport with the proposed amendments to Chapter 81 as published.

The amendment to §81.3 is needed to update the rules to conform to citation changes in the Texas Insurance Code, Chapter 1551.

The amendment to §81.5 is needed to update the rules to conform to citation changes in the Texas Insurance Code, Chapter 1551. Sections 81.5(a) and 81.5(b) are amended to reflect that a new employee or eligible officer who has existing, current, and continuous Group Benefits Program (GBP) coverage may enroll in health coverage as a new employee or eligible officer without a waiting period. Sections 81.5(c)(1-3) are amended to reflect that retiree health coverage eligibility requires the participants to be at least age 65 with 10 years of eligible service credit or to meet the rule of 80 with 10 years if eligible service credit. These rule amendments conform with statutory changes. Retirees not eligible at the time of retirement become eligible on the first day of the month after the 65th birthday. Additionally, retirees who do not retire directly from state service will incur a 90-day waiting period on their 65th birthday. In addition, Section 81.5(c)(3) reflects statutory requirements of interim insurance for certain retirees who are not eligible for health coverage at the time of retirement. House Bill 7 specified that the retiree is responsible for payment of the total cost of such coverage as determined by the Board of Trustees. One comment was received from an individual on §81.5(c)(3). The commenter stated his belief that this section does not comport with the requirements of equal protection under state constitutional law. The commenter also believes that the rule does not comply with House Bill 7. ERS responds that this amendment comports with House Bill 7, Acts of the 78th Legislature, Third Called Session, and is not unconstitutional.

Section 81.5(c)(3) is adopted with nonsubstantive changes. The Board adopted a change to the published text replacing the term "continuation coverage" with the term "interim insurance."

Section 81.5(c)(7) is amended to reflect that a retiree who returns to work for a department may continue eligible coverage as a retiree or elect to participate in the program as a full-time or part-time employee. Section 81.5(d)(2)(A) is amended to further clarify that simultaneous coverage is prohibited. Section 81.5(f)(1-3) is amended to further clarify the length of service requirement for eligibility of surviving dependents. Section 81.5(g) is amended to reflect that a retiree under the Optional Retirement Program (ORP) must meet the same age, length-of-service, and other requirements as provided in Section 81.5(c). Additionally, this section is amended to reflect the requirement that an ORP participant who is approved for disability retirement must have at least 10 years of eligible service credit to be eligible for GBP health coverage.

The amendment to §81.7 is needed to update the rules to conform to citation changes in the Texas Insurance Code, Chapter 1551. Section 81.7(a-c) are amended to establish enrollment procedures and effective dates of coverage for participants and their dependents who are and who are not subject to the health insurance waiting period. In addition, §81.7(a)(6), (8), (9) and §81.7(h)(E) are adopted with nonsubstantive changes. The Board adopted these changes to the published text to reference the correct paragraph numbers within this section.

The amendment to §81.9 clarifies the grievance procedure for participants who are given administrative appeal rights by ERS. In addition, Section 81.9 changes the term "person" to "participant" and references Chapter 67 of this title to define a duly authorized representative of a participant.

The amendment to §81.11 is needed to update the rules to conform to citation changes in the Texas Insurance Code, Chapter 1551.

The amended sections are adopted under Texas Insurance Code, §1551.052 which provides authorization for the Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

§81.1. Definitions.

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

(1) Accelerated life benefit--An amount of term life insurance to be paid in advance of the death of an insured employee, annuitant, or dependent, as requested by the employee or annuitant and approved by the carrier, in accordance with the terms of the group term life plan as permitted by Chapter 1551.254 of the Insurance Code. Accelerated life benefit payment may be requested only upon diagnosis of a terminal condition and only once during the lifetime of the insured employee, annuitant, or dependent. A terminal condition is a non-correctable health condition that with reasonable medical certainty will result in the death of the insured within 12 months.

(2) Act--The Texas Employees Group Benefits Act, Act of the 77th Legislature, 2001, as amended, Insurance Code, Chapter 1551.

(3) Active duty--The expenditure of time and energy in the service of the State of Texas. An employee will be considered to be on active duty on each day of a regular paid vacation or regular paid sick leave or on a non-working day, if the employee was on active duty on the last preceding working day.

(4) AD&D--Accidental death and dismemberment.

(5) Age of employee--The age to be used for determining optional term life and voluntary AD&D insurance premiums will be the employee's attained age as of the employee's first day of active duty within a contract year.

(6) Annuitant--A person authorized by the Act to participate in the Program as an annuitant.

(7) Basic plan--The plan of group insurance determined by the trustee, currently HealthSelect participant only and basic term life insurance coverage, in which every full-time employee, or retiree who is eligible at the time of retirement, is automatically enrolled after completion of any required waiting period or unless participation is expressly waived.

(8) Board or trustee--The board of trustees of the Employees Retirement System of Texas.

(9) Contract year--A contract year begins on the first day of September and ends on the last day of the following August.

(10) Department--Commission, board, agency, division, institution of higher education, or department of the State of Texas created as such by the constitution or statutes of this state, or other governmental entity whose employees or retirees are authorized by the Act to participate in the program.

(11) Dependent--The spouse of an employee or retiree and unmarried children under 25 years of age, including:

(A) the natural child of an employee/retiree;

(B) a legally adopted child (including a child living with the adopting parents during the period of probation);

(C) a stepchild whose primary place of residence is the employee/retiree's household;

(D) a foster child whose primary place of residence is the employee/retiree's household and who is not covered by another governmental health program;

(E) a child whose primary place of residence is the household of which the employee/retiree is head and to whom the employee/retiree is legal guardian of the person;

(F) a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older, the natural parent does not reside in the same household;

(G) a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;

(H) an eligible child, as defined in this subsection, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(I) a child eligible under Chapter 1551.004 of the Act, provided that the child's mental retardation or physical incapacity is a medically determinable condition which prevents the child from engaging in self-sustaining employment, that the condition commences before the date of the child's 25th birthday, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25 and at such intervals thereafter as may be required by the system.

(12) Eligible to receive an annuity--Refers to a person who, in accordance with the Act, meets all requirements for retirement from a state retirement program or the Optional Retirement Program.

(13) Employee--A person authorized by the Act to participate in the program as an employee.

(14) Employing office--For a retiree covered by this program, the office of the Employees Retirement System of Texas in Austin, Texas or the retiree's last employing department; for an active employee, the employee's employing department.

(15) Evidence of insurability--Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(h) of this title (relating to Enrollment and Participation).

(16) Former COBRA unmarried child--a child of an employee or retiree who is unmarried; whose GBP coverage as a dependent has ceased; and who upon expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272 (COBRA) reinstates GBP coverage.

(17) HealthSelect of Texas--The statewide point-of-service plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO.

(18) HMO--A health maintenance organization approved by the board to provide health care benefits to eligible participants in the program in lieu of participation in the program's HealthSelect of Texas plan.

(19) Insurance premium expenses--Any out-of-pocket premium incurred by a participant, or by a spouse or dependent of such participant, as payment for coverage provided under the program that exceeds the state's or institution's contributions offered as an employee benefit by the employer. The types of premium expense covered by the premium conversion plan include out-of-pocket premium for group term life, health (including HMO premiums), AD&D, and dental, but do not include out-of-pocket premium for long or short term disability or dependent term life.

(20) Leave without pay--The status of an employee who is certified by a department administrator to be absent from duty for an entire calendar month, who does not receive any compensation for that month, and who has not received a refund of retirement contributions based upon the most recent term of employment.

(21) ORP--The Optional Retirement Program as provided in the Government Code, Chapter 830.

(22) Placement for adoption--A person's assumption and retention of a legal obligation for total or partial support of a child in anticipation of the person's adoption of such child.

(23) Preexisting condition--Any injury or sickness, for which the employee received medical treatment, or services, or took prescribed drugs or medicines during the three-month period immediately prior to the effective date of such coverage. However, if the evidence of insurability requirements set forth in §81.7(h) of this title must first be satisfied, the three-month period for purposes of determining the preexisting conditions exclusion will be the three-month period immediately preceding the date of the employee's completed application for coverage.

(24) Premium conversion plan--A separate plan, under the Internal Revenue Code, §79 and §106, adopted by the board of trustees and designed to provide premium conversion as described in §81.7(f) of this title.

(25) Program--The Texas Employees Group Benefits Program as established by the Board pursuant to the Act and known as the Group Benefits Program (GBP).

(26) Retiree--An employee who retires or is retired and who:

(A) is authorized by the Act to participate in the program as a retiree;

(B) on August 31, 1992, was a participant in a group insurance program administered by an institution of higher education; or

(C) on the date of retirement, meets the service credit requirements of the Act for participation in the program as an annuitant; and

(i) on August 31, 2001, was an eligible employee with a department whose employees are authorized to participate in the program and, on the date of retirement has three years of service with such a department; or

(ii) on August 31, 2001, had three years of service as an eligible employee with a department whose employees are authorized to participate in the program.

(27) Salary--The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary, including longevity, shift differential, hazardous duty pay, and benefit replacement pay, received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials and members of the legislature may use the salary

of a state district judge or their actual salary as of September 1 of each year.

(28) System--The Employees Retirement System of Texas.

(29) TRS--The Teacher Retirement System of Texas.

§81.5. Eligibility.

(a) Full-time employees. A full-time employee, elected officer, or appointed officer of the State of Texas is eligible for automatic coverage upon completion of the waiting period established in Section 1551.1055 of the Act. A rehired full-time employee, reelected officer, or reappointed officer of the State of Texas, including a new full-time employee, each with existing, current, and continuous GBP health coverage as of the date the employee begins active duty or is qualified for and begins to hold office, is eligible for automatic coverage without a waiting period provided there has been no break in coverage in the GBP. However, an employee of an institution of higher education and the employee's eligible dependents are eligible for coverage on the first day that an employee performs services as an employee of an institution of higher education only if:

(1) the full amount of premiums are paid for the employee's coverage from the first date of employment through the completion of the waiting period defined in §1551.1055(a) of the Act;

(2) any premiums paid as provided in paragraph (1) of this subsection shall not be paid using money appropriated from the general revenue fund; and

(3) any institution of higher education electing to pay the premium for any employee as described in this subsection must do so for all eligible full-time employees.

(b) Part-time employees. A part-time employee or other employee who is not eligible for automatic coverage becomes eligible for coverage upon completion of the waiting period established in Section 1551.1055 of the Act and upon application to participate in the program, subject to the provisions of §81.7(b) of this title (relating to Enrollment). A rehired part-time employee, reelected part-time officer, or reappointed part-time officer of the State of Texas, including a new part-time employee, each with existing, current, and continuous GBP health coverage as of the date the employee begins active duty or is qualified for and begins to hold office, who is not eligible for automatic coverage is eligible for coverage without a waiting period provided there has been no break in coverage.

(1) However, a part-time employee of an institution of higher education and the employee's eligible dependents are eligible for coverage on the first day that a part-time employee performs services as a part-time employee of an institution of higher education only if

(A) the full amount of premiums are paid for the part-time employee's coverage from the first date of employment through the completion of the waiting period defined in §1551.1055(a) of the Act;

(B) any premiums paid as provided in subparagraph (A) of this paragraph shall not be paid using money appropriated from the general revenue fund; and

(C) any institution of higher education electing to pay any portion of the premium for any part-time employee as described in this subsection or in §1551.101(e)(2) must do so for all eligible similarly situated part-time employees.

(2) An institution of higher education is also not prohibited from contributing a portion or all of the required premium for certain part-time employees described by §1551.101(e)(2) of the Act only if:

(A) the premiums not paid by the general revenue fund are paid by the institution of higher education with funds that are not appropriated from the general revenue fund;

(B) any institution of higher education electing to pay the premiums for any part-time employee as described in §1551.101(e)(2) of the Act must do so for all eligible part-time employees described therein; and

(C) any premiums paid as provided in subparagraph (A) of this paragraph must be paid from the first date of the part-time employee's initial enrollment.

(c) Retirees.

(1) A retiree who is at least 65 years of age with a minimum of 10 years eligible service credit or a retiree whose age and eligible service credit equals or exceeds 80 with a minimum of 10 years eligible service credit, is eligible for health coverage on the day he or she becomes an annuitant provided the individual retires directly from state service. If the individual does not retire directly from state service as described in §1551.1055(b) of the Act, eligibility for health coverage begins on the first day of the calendar month following 90 days after the date of retirement.

(2) A retiree who is less than 65 years of age with a minimum of 10 years eligible service credit is eligible for health coverage on the first day of the calendar month following the date on which the individual reaches 65 years of age provided the individual retires directly from state service. If the individual does not retire directly from state service as described in §1551.1055(b) of the Act, eligibility for health coverage begins on the first day of the calendar month following 90 days after the retiree's 65th birthday.

(3) A retiree who is not eligible for health coverage at the time of retirement is eligible for dental coverage and, except as provided in paragraph (4) of this subsection, optional life insurance and dependent life insurance at the time of retirement. A retiree described by this paragraph and by paragraph (2) of this subsection, is eligible for coverage under the provisions described in Texas Insurance Code, Chapter 1551, as amended by House Bill 7, 78th Legislature 3rd Special Session, upon payment of the total cost, as determined by the Board of Trustees, for coverages subject to the requirements of Tex. Ins. Code §1551.323. For purposes of §1551.323, the total cost shall be determined by the Board of Trustees based on an actuarial determination, as recommended by the system's consulting actuary for insurance, of the estimated total claims costs for individuals eligible for interim insurance pursuant to §1551.323. If an individual who is eligible for this interim insurance is also eligible for COBRA coverage, then COBRA coverage should be exhausted, if possible, before applying for the interim insurance described by this subsection.

(4) A retiree is eligible for optional life insurance and dependent life insurance coverage if the retiree was enrolled in such coverage on the day before becoming an annuitant. Except as provided in paragraph (5) of this subsection, a retiree may not increase the amount of life insurance for which the retiree was enrolled on the day before becoming an annuitant, but may cancel life insurance coverage at any time. Canceled life insurance coverages may never be reinstated. A retiree is not eligible for disability or AD&D coverage.

(5) A retiree who is not enrolled in minimum retiree optional life insurance or dependent life insurance coverage is eligible to apply for such coverage. Submission of evidence of insurability acceptable to the system shall be required for enrollment in such coverage.

(6) A covered retiree who was not enrolled in dependent life insurance coverage on the day before becoming an annuitant becomes eligible for dependent life insurance coverage of a newly acquired dependent on the first day of the month following the date on which the individual becomes a dependent of the retiree.

(7) A retiree who returns to work for a department may continue coverages for which he is eligible as a retiree, or, subject to subsection (a) or subsection (b) of this section, elect to participate in the program as a full-time or part-time employee. Time spent in an eligible position as a return to work retiree may not be used to meet eligibility requirements for retiree health insurance coverage. A return to work retiree may elect retiree coverages for which he is eligible at the time of separation from department service.

(8) A retiree whose extended life insurance benefits are terminated is eligible for retiree life insurance coverage on the first day of the month following the extended life insurance benefits termination date.

(d) Dependents of employees and retirees.

(1) The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. Except as otherwise provided in this paragraph, a newly acquired dependent is eligible for coverage on the first day of the month following the date on which the individual becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before the employee's or retiree's dependents are eligible for that type of coverage. An eligible child for whom a covered employee or retiree is court ordered to provide medical support becomes eligible for health coverage upon receipt by the department of a valid court order. A newborn natural child is eligible automatically on the date of birth. A newly adopted child is eligible automatically on the date of placement for adoption.

(2) Except as otherwise provided in this paragraph, double coverage is not permitted for any participant in the program.

(A) A participant may not be simultaneously covered by basic or optional term life insurance as an employee or retiree and dependent term life insurance as a dependent. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the Program. Except as provided in subparagraph (B) of this paragraph, a dependent may not be covered by more than one employee or retiree for the same coverage.

(B) A child who is an eligible dependent of two participants in the Program may be enrolled in dependent life insurance coverage and accidental death and dismemberment coverage by both participants.

(e) Former COBRA unmarried children.

(1) A former COBRA unmarried child is eligible to continue the health and dental insurance coverages in which the child was enrolled upon expiration of the child's continuation coverage under COBRA.

(2) A former COBRA unmarried child continuing health insurance coverage under the provisions of this subsection is eligible for dental insurance coverage if such coverage was not in effect upon the expiration of the child's continuation coverage under COBRA.

(f) Surviving dependents.

(1) The surviving spouse of a retiree or the surviving spouse of an active employee is eligible to continue coverage in the health and dental benefits plans in which the surviving spouse was enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least 10 years of service credit, including at least 3 years on August 31, 2001 or at least 10 years after August 31, 2001 of service as an eligible employee with a Program participating department, at the time of death. A surviving spouse who is also a state retiree or state employee shall not be eligible for surviving spouse benefits as long as he or she is eligible for coverage as an employee or retiree. Participants continuing coverage as surviving spouses are not eligible for life insurance coverages.

(2) Dependent children of a deceased active employee or retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had, at the time of death, at least 10 years of service credit, including at least 3 years on August 31, 2001 or at least 10 years after August 31, 2001 of service as an eligible employee with a Program participating department, as long as the surviving spouse is eligible and continues to participate in the program. Dependent children of deceased employees or retirees will be considered as dependents of the deceased employee's or retiree's surviving spouse for purposes of the program. Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(3) Dependent children of a deceased active employee/retiree are eligible to continue coverage in the health and dental benefits plans in which the dependent children were enrolled on the day of death of the employee/retiree provided, however, the deceased active employee must have had at least 10 years of service credit, including at least 3 years on August 31, 2001 or at least 10 years after August 31, 2001 of service as an eligible employee with a Program participating department, at the time of death. A surviving dependent child may continue such coverage until the dependent child becomes ineligible as defined in §81.1 of this title (relating to Definitions). Participants continuing coverage as surviving dependents are not eligible for life insurance coverage.

(4) A surviving spouse or a dependent child of a paid law enforcement officer employed by the state or a custodial employee of the institutional division of the Texas Department of Criminal Justice who suffers a violent death in the course of performance of duty is eligible to continue or enroll in health and dental coverages. A surviving spouse or natural or adopted children eligible under this section may enroll within 90 days from the date of death. Other eligible dependent children may continue health and dental coverages in effect on the date of death.

(5) A surviving spouse and eligible dependents, and a surviving dependent child, continuing health insurance coverage under the provisions of this subsection are eligible for dental insurance coverage if such coverage was not in effect on the date of death of the deceased employee or retiree.

(g) Retiree under ORP.

(1) A member of the ORP is eligible for health coverage on the day he or she receives or is eligible to receive an annuity under the ORP program or would have been eligible to receive an annuity had his or her membership been in the Teacher Retirement System rather than the ORP, and meets the age, length-of-service, and other requirements as provided in §81.5(c) of this title (relating to Eligibility).

(2) A member of the ORP is eligible for additional coverages and plans which include optional and voluntary coverages in the program as long as he or she receives or is eligible to receive an annuity under the ORP program or would have been eligible to receive an annuity had his or her membership been in the Teacher Retirement System rather than the ORP.

(h) Disability retirement. An applicant who is approved for disability retirement is entitled to retiree insurance coverages as provided in §81.7(c) of this title (relating to Enrollment and Participation). An ORP participant authorized by the Act with at least 10 years of eligible service credit, and granted ORP disabled retiree status in the Program, as established by the disability test used by the system, is eligible to participate in the Program. Initial or continued eligibility for insurance coverage for an ORP disabled retiree will be determined by the system under the following provisions.

(1) An ORP participant is eligible for ORP disabled retiree status in the program if the ORP participant is not otherwise eligible to participate in the program as an employee or retiree and is certified by a licensed physician designated by the system as disabled as provided in paragraph (2) of this subsection. An ORP participant may apply for disabled retiree status in the program by filing a written application for ORP disabled retiree status in the program or having an application filed with the system by the ORP participant's spouse, employer, or legal representative. In addition to an application for ORP disabled retiree status in the program, an ORP participant must file with the system the results of a medical examination of the ORP participant. After an ORP participant applies for ORP disabled retiree status in the program, the system may require the ORP participant to submit additional information about the disability. The system will prescribe forms for the information required by this section.

(2) If a licensed physician designated by the system finds that the ORP participant is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the physician will certify the disability. The Executive Director is authorized to approve ORP disabled retiree status in the program after a certification of disability is made. Once each year during the first five years after an ORP participant enrolls in the program as an ORP disabled retiree, and once in each three-year period after that, the system may require an ORP disabled retiree to undergo a medical examination by a physician the system designates. If an ORP disabled retiree refuses to submit to a medical examination as provided by this section, the system will suspend the ORP disabled retiree's enrollment in the program until the ORP disabled retiree submits to an examination. The system will terminate the ORP disabled retiree's coverage in the program and notify the ORP participant in writing if:

(A) the system concurs with a certification issued by the designated physician which finds that an ORP disabled retiree is no longer mentally or physically disabled from the further performance of duty; or

(B) an ORP disabled retiree refuses for more than one year to submit to a required medical examination.

(3) The effective date of coverage for an ORP disabled retiree in the program is the first of the month following the date the application for ORP disabled retiree status in the program is received by the system, or the first of the month following the date employment is terminated, whichever is later.

(i) Former members of the legislature. A former member of the legislature authorized by the Act to continue to participate in the program is eligible for the coverage, other than disability income insurance coverage, in effect on the day before the member leaves office.

(j) Former employees of the legislature. A former employee of the legislature authorized by the Act to continue to participate in the program is eligible for the coverage, other than disability income insurance coverage, in effect on the day before the employee terminates employment.

(k) Continuation of health and dental coverages only for certain spouses and dependent children of employee/retirees, and for certain terminating employees, their spouses, and dependent children (as provided by the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272).

(1) The surviving spouse and/or dependent child/children of a deceased employee or retiree who are not eligible to continue coverage under the provisions of the Act or subsection (f) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, and who are not covered under any other group health plan, or who were covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 Health Insurance Portability and Accountability Act (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of death of the employee/retiree. A formal election must be made to continue coverage by the surviving spouse and/or the dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage terminated, whichever is later.

(2) An employee whose employment has been terminated voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided for in §81.7(1)(2)(A) of this title, except for those persons not eligible pursuant to §81.11(c) of this title (relating to Termination of Coverage), and/or his or her spouse and/or dependent child/children who are not eligible to continue coverage under the provisions of the Act or subsection (h) or (i) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, who are not covered under any other group health plan, or who were covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 18 months the health and dental coverages only without the basic term life that were in effect immediately prior to the date of the loss of coverage. A formal election must be made to continue coverage by the employee and/or his or her spouse and/or dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage terminated, whichever is later.

(3) If an employee, spouse, or dependent child is determined by the Social Security Administration to have been disabled before or during the first 60 days of continuation coverage, all covered individuals may continue health and dental coverages extended up to an additional 11 months, for a total of 29 months. Notification of the Social Security Administration's determination must be received by the system before the end of the original 18 months of continuation coverage. Continuation coverage will be canceled the month that begins more than 30 days after the date the Social Security Administration determines that the participant is no longer disabled.

(4) A spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children who are not otherwise eligible to continue coverage under the provisions of the Act or subsection (d) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, who are not covered under any other group health plan, or who are covered by a plan that subjects them to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-92 (HIPAA), may continue for up to 36 months the health and dental coverages only

that were in effect immediately prior to the date the divorce decree is signed. The employee/retiree or the divorced spouse or the divorced spouse's dependent child/children must notify the system through the employing department or retiree benefits coordinator of the divorce within 60 days from the date the divorce decree is signed. A formal election must be made to continue coverage by the divorced spouse and/or the dependent child/children. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(5) A dependent child under 25 years of age who marries, who is not entitled to benefits under the Social Security Act, Title XVIII, who is not covered under any other group health plan, or who are covered by a plan that subjects the child to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of the marriage. The married child or the employee/retiree must notify the system through the employing department or retiree benefits coordinator of the marriage within 60 days from the date of the marriage. A formal election must be made by the married child to continue coverage. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(6) A dependent child who has attained 25 years of age, who is not otherwise eligible to continue coverage indefinitely under the provisions of the Act or subsection (d) of this section, who is not entitled to benefits under the Social Security Act, Title XVIII, who is not covered under any other group health plan, or who is covered by a plan that subjects the child to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), may continue for up to 36 months the health and dental coverages only that were in effect immediately prior to the date of the child's 25th birthday. The child or employee/retiree must notify the system through the employing department or retiree benefits coordinator within 60 days of the child's 25th birthday. A formal election must be made by the 25-year-old child to continue coverage. The formal election must be postmarked or received by the system within 60 days of the date of notice contained in the notice of right to continue coverage form or by the date coverage is terminated, whichever is later.

(7) Extension of continuation of coverage for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (2) of this subsection is governed by the following provisions.

(A) The surviving spouse and/or dependent child/children of a deceased former employee whose death occurred during the period of continuation coverage, who satisfy the provisions of paragraph (1) of this subsection and who notify the Employees Retirement System of Texas within 60 days of the date of death of the former employee are entitled to a total of 36 months of continuation coverage.

(B) A spouse who is divorced from a former employee during the period of continuation coverage and/or the divorced spouse's dependent child/children who satisfy the provisions of paragraph (4) of this subsection are entitled to a total of 36 months of continuation coverage.

(C) A dependent child under 25 years of age who marries during the period of continuation coverage and who satisfies the provisions of paragraph (5) of this subsection is entitled to a total of 36 months of continuation coverage.

(D) A dependent child who attains the age of 25 years during the period of continuation coverage and who satisfies the provisions of paragraph (6) of this subsection is entitled to a total of 36 months of continuation coverage.

(E) An employee, spouse, or dependent child determined by the Social Security Administration to be disabled at the time of termination of the employee's employment and who satisfies the provisions of paragraph (3) of this subsection is entitled to a total of 29 months of continuation coverage.

(F) No person shall be allowed to continue health and dental coverages under the provisions of this subsection for more than 36 months.

(8) A person who continues benefits under the provisions of paragraphs (1)-(7) of this subsection may change coverage levels or plans during the continuation period on the same basis as an employee/retiree participant, provided, however, that health and dental coverages which are canceled during the continuation period may not be reestablished.

(9) In all situations deemed applicable by the Employees Retirement System of Texas where state or federal laws or regulations mandate specific terms or provisions which are omitted or conflict with specific terms or provisions of the group contracts or trustees' rules, the appropriate contracts and rules shall be interpreted and administered to comply with such laws or regulations.

(l) Former board members. Subject to the limitations of this subsection, a former member of a board or commission or of the governing body of an institution of higher education, as both are described in Section 1551.109 of the Act, is eligible to continue the coverage, other than disability income insurance coverage, in effect on the day before the member leaves office if no lapse in coverage occurs after the end of the term of office. Life insurance coverage may not exceed Election II.

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

(1) A new employee:

(A) who is not subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a) of this title (relating to Eligibility) for automatic insurance coverage, shall be enrolled in the basic plan of health and life insurance unless the employee completes an enrollment form to elect other coverages or to decline health coverage. Coverage of an employee under the basic plan, and other coverages selected as provided in this paragraph, become effective on the date on which the employee begins active duty.

(B) who is subject to the health insurance waiting period and is eligible under the Act and as provided for in §81.5(a) of this title (relating to Eligibility) for automatic insurance coverage, shall be enrolled in the basic plan of health and life insurance beginning on the first day of the calendar month following 90 days of employment unless, before this date, the employee completes an enrollment form to elect other coverages or to decline health coverage.

(2) A new employee with existing, current, and continuous GBP coverage as of the date the employee begins active duty is not subject to the health insurance waiting period established in Section 1551.1055 of the Act, and is eligible to enroll as a new employee in health insurance and additional coverages and plans which include optional and voluntary coverages by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverages selected before the

first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(3) Dependent enrollment and optional coverages:

(A) To enroll eligible dependents, to elect to enroll in an approved HMO, and to elect additional coverages and plans which include optional and voluntary coverages, an employee not subject to the health insurance waiting period shall complete an enrollment form within 30 days after the date on which the employee begins active duty. Coverages selected within 30 days after the date on which the employee begins active duty become effective on the first day of the month following the date on which the enrollment form is completed. An enrollment form completed after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section.

(B) To enroll eligible dependents or to elect to enroll in an approved HMO, an employee subject to the health insurance waiting period shall complete an enrollment form before the first day of the month following 90 days of employment. Coverages selected before the first day of the month following 90 days of employment become effective on the first day of the month following 90 days of employment. An employee completing an enrollment form after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section. The provisions of paragraph (2)(A) of this subsection apply to the election of additional coverages and plans, which include optional and voluntary coverages, for an employee subject to the health insurance waiting period.

(4) Except as otherwise provided in this section, an employee may not change coverage during a contract year.

(5) An eligible employee who enrolls in the program is eligible to participate in premium conversion and shall be automatically enrolled in the premium conversion plan. The employee shall be automatically enrolled in the plan for subsequent plan years as long as the employee remains on active duty.

(6) Coverage for a newly eligible dependent, other than a dependent referred to in paragraphs (7) or (9) of this subsection, will be effective on the first day of the month following the date the person becomes a dependent if an enrollment form is completed on or within 30 days after the date the person first becomes a dependent. If the enrollment form is completed and signed after the initial period for enrollment as provided in this paragraph, the enrollment form will be governed by the rules in subsection (h) of this section.

(7) A newborn natural child will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree. A newly adopted child will be covered immediately and automatically from the date of placement for adoption in the health plan in effect for the employee or retiree. To continue coverage for more than 30 days after the date of birth or placement for adoption, an enrollment form for health coverage must be submitted within 30 days after the date of birth or placement for adoption.

(8) The effective date of a newborn natural child's life and AD&D insurance will be the date of birth, if the child is born alive, as certified by an attending physician. The effective date of a newly adopted child's life and AD&D insurance will be the date of placement for adoption. The effective date of all other eligible dependents' life and AD&D insurance coverages will be as stated in paragraph (6) of this subsection.

(9) Health insurance coverage of an eligible child for whom a covered employee or retiree is court-ordered to provide medical support becomes effective on the date on which the department receives a valid copy of the court order.

(10) The effective date of HealthSelect of Texas coverage for an employee's or retiree's dependent, other than a newborn natural child or newly adopted child, will be as stated in paragraph (6) of this subsection.

(11) For purposes of this section, an enrollment form is completed when all information necessary to effect an enrollment has been transmitted to the system in the form and manner prescribed by the system.

(b) Part-time employees. A part-time employee or other employee who is not automatically covered must complete an application/enrollment form provided by the Employees Retirement System of Texas, authorizing necessary deductions for premium payments for elected coverage. All other rules for enrollment stated in subsection (a) of this section, other than the rule as to automatic coverage, apply to such employee:

(1) If the employee is not subject to a health insurance waiting period, this form must be submitted to the Employees Retirement System of Texas through his or her employing department on, or within 30 days after, the date on which the employee begins active duty.

(2) If the employee is subject to a health insurance waiting period, this form must be submitted to the Employees Retirement System of Texas through his or her employing department before the first day of the month following 90 days of employment.

(3) If the employee has existing, current, and continuous GBP coverage as of the date the employee begins active duty, the employee is not subject to the health insurance waiting period established in Section 1551.1055 of the Act, and is eligible to enroll as a new employee in health insurance and additional coverages and plans which include optional and voluntary coverages by completing an enrollment form before the first day of the calendar month after the date the employee begins active duty. Health and additional coverages selected before the first day of the calendar month after the date the employee begins active duty are effective the first day of the following month.

(c) Retirees and their dependents.

(1) Provided the required premiums are paid or deducted, an employee's health, dental and term life insurance coverage (including eligible dependent coverages) may be continued upon retirement as provided in §81.5(c) of this title (relating to Eligibility). The life insurance will be reduced to the maximum amount which the retiree is permitted to retain under the insurance contract as a retiree. All other coverages in force for the active employee, but not available to a retiree, will automatically be discontinued concurrently with the commencement of retirement status. If a retiree retires directly from department service and is not covered as an active employee on the day before becoming an annuitant, the retiree will be enrolled in the basic plan.

(2) A retiree may enroll in health, dental, and life insurance coverages for which the retiree is eligible as provided in §81.5(c) of this title (relating to Eligibility), including dependent coverages, by completing an enrollment form as specified in paragraph (2)(A) - (2)(C) of this subsection. For the purposes of this paragraph, the effective date of retirement of a retiree who is eligible to receive, but who is not actually receiving, an annuity is the date on which the system receives written notice of the retirement. An application/enrollment form received after the initial period for enrollment as provided in this paragraph is subject to the provisions of subsection (h) of this section.

(A) A retiree who is not subject to the health insurance waiting period on the effective date of retirement as provided in

§81.5(c) of this title (relating to Eligibility), may enroll in health, dental, and life insurance coverages for which the retiree is eligible, including dependent coverage, by completing an enrollment form before, on, or within 30 days after, the retiree's effective date of retirement.

(B) A retiree who is subject to the health insurance waiting period on the effective date of retirement as provided in §81.5(c) of this title (relating to Eligibility), may enroll in health coverage for which the retiree is eligible, including dependent coverage, by completing an enrollment form before the first day of the calendar month following 90 days after the date of retirement or before the first day of the calendar month after the retiree's 65th birthday, whichever is later as appropriate. The effective date for such coverages shall be the first day of the calendar month following 90 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later as appropriate.

(C) A retiree who is ineligible for health insurance on the effective date of retirement as provided in §81.5(c) of this title (relating to Eligibility), may enroll in health coverage for which the retiree is eligible, including dependent coverage, by completing an enrollment form before the first day of the calendar month after the retiree's 65th birthday. The effective date for such coverages shall be the first day of the calendar month following 90 days after the date of retirement or the first day of the calendar month following the retiree's 65th birthday, whichever is later.

(3) A retiree who becomes eligible for minimum retiree optional life insurance coverage or dependent life insurance coverage as provided in §81.5(c)(5) of this title (relating to Eligibility), may apply for approval of such coverage by providing evidence of insurability acceptable to the system.

(4) Enrollments and applications to change coverage become effective as provided in paragraph (2) of this subsection unless other coverages are in effect at that time. If other coverages are in effect at that time, coverage becomes effective on the first day of the month following the date of approval of retirement by the Employees Retirement System of Texas; or, if cancellation of the other coverages preceded the date of approval of retirement, the first day of the month following the date the other coverages were canceled.

(5) All other enrollment rules stated in subsections (a), (g), and (l) of this section apply to retirees.

(d) Surviving dependents

(1) Provided that the required premiums are paid or deducted, the health and dental insurance coverages of a surviving dependent may be continued on the death of the deceased employee or retiree if the dependent is eligible for such coverage as provided by §81.5(f) of this title (relating to Eligibility).

(2) A surviving spouse who is receiving an annuity shall make premium payments by deductions from the annuity as provided in §81.3(b)(2)(A) of this title (relating to Administration). A surviving spouse who is not receiving an annuity may make payments as provided in §81.3(b)(2)(B) of this title.

(e) Former COBRA unmarried children. A former COBRA unmarried child must provide an application to continue health and dental insurance coverage within 30 days after the date the notice of eligibility is mailed by the system. Coverage becomes effective on the first day of the month following the month in which continuation coverage ends. Premium payments may be made as provided in §81.3(b)(2)(B) (relating to Administration).

(f) Premium conversion plans.

(1) An eligible employee participating in the program is deemed to have elected to participate in the premium conversion plan and to pay insurance premium expenses with pre-tax dollars as long as the employee remains on active duty. The plan is intended to be qualified under the Internal Revenue Code, §79 and §106.

(2) Maximum benefit available. Subject to the limitations set forth in these rules and in the plan, to avoid discrimination, the maximum amount of flexible benefit dollars which a participant may receive in any plan year for insurance premium expenses under this section shall be the amount required to pay the participant's portion of the premiums for coverage under each type of insurance included in the plan.

(g) Special rules for additional coverages and plans which include optional and voluntary coverages.

(1) Only an employee or retiree or a former officer or employee specifically authorized to join the program may apply for additional coverages and plans. An employee/retiree may apply for or elect additional coverages and plans without concurrent enrollment in health coverage provided by the program. A member of the Texas National Guard or any of the reserve components of the United States armed forces who is assigned to active military duty and who is enrolled in additional coverages and plans may cancel health coverage and retain all other coverages and plans during the period of such assignment. Additional coverages and plans, as determined by the board, may include:

(A) dental coverage;

(B) optional term life;

(C) dependent term life;

(D) short and long-term disability;

(E) voluntary accidental death and dismemberment;

(F) long-term care; or

(G) health care and dependent care reimbursement.

(2) An eligible participant in the program and eligible dependents may participate in an approved HMO if they reside in the approved service area of the HMO and are otherwise eligible under the terms of the contract with the HMO.

(3) An eligible participant in the Program electing additional coverages and plans and/or HMO or coverage in lieu of the basic plan of insurance is obligated for the full payment of premiums. If the premiums are not paid, all coverages not fully funded by the state contribution will be canceled. A person entitled to the state contribution will retain member only health coverage provided the state contribution is sufficient to cover the premium for such coverage. If the state contribution is not sufficient for member only coverage in the health plan selected by the employee or retiree, the employee or retiree will be enrolled in the basic plan except as provided for in subsection (l)(2)(B) of this section.

(4) An eligible participant in the Program enrolled in an HMO whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible by completing an enrollment form during the annual enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is eligible to enroll in another approved

HMO. The effective date of the change in coverage for the eligible participant shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the department;

(C) enroll in HealthSelect of Texas without evidence of insurability by completing an enrollment form during the annual enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, the participant will automatically be enrolled in the basic plan. Evidence of insurability for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(5) An employee, retiree, or other eligible program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the terms of its contract with the Employees Retirement System of Texas will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the board;

(B) enroll in HealthSelect of Texas without evidence of insurability provided the participant is not eligible to enroll in another approved HMO. The effective date of the change in coverage will be determined by the board; or

(C) if a participant is eligible to enroll in another HMO, the board may allow the participant to enroll in HealthSelect of Texas without evidence of insurability. The effective date of the change in coverage will be determined by the board.

(h) Changes in coverage after the initial period for enrollment.

(1) Changes for Qualifying Life Event.

(A) Subject to the provisions of paragraphs (3) and (4) of this subsection, a participant shall be allowed to change coverage during a plan year if a qualifying life event occurs as provided in this paragraph and the change in coverage is consistent with the qualifying life event.

(B) A qualifying life event occurs when a participant experiences one of the following changes:

(i) change in marital status;

(ii) change in dependent status;

(iii) change in employment status;

(iv) change of address that results in loss of benefits eligibility;

(v) change in Medicare or Medicaid status;

(vi) significant cost of benefit or coverage change imposed by a third party provider; or

(vii) change in coverage ordered by a court.

(C) A participant who loses benefits eligibility as a result of a change of address shall change coverage as provided in paragraphs (6) - (9) of this subsection.

(D) A participant may apply to change coverage on, or within 30 days after, the date of the qualifying life event.

(E) Except as otherwise provided in subsections (a)(7) and (a)(9) of this section, the change in coverage is effective on the first day of the month following the date on which the enrollment form is completed.

(F) The plan administrator may require documentation in support of the qualifying life event.

(2) Effects of change in cost of benefits to the premium conversion plan. There shall be an automatic adjustment in the amount of premium conversion plan dollars used to purchase optional benefits in the event of a change, for whatever reason, during an applicable period of coverage, of the cost of providing such optional benefit to the extent permitted by applicable law and regulation. The automatic adjustment shall be equal to the increase or decrease in such cost. A participant shall be deemed by virtue of participation in the plan to have consented to the automatic adjustment.

(3) An eligible participant who wishes to add or increase coverage, add eligible dependents to HealthSelect of Texas, or change coverage from an HMO to HealthSelect of Texas after the initial period for enrollment must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with paragraph (1) of this subsection, coverage will become effective on the first day of the month following the date approval is received by the employee's benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee whose coverage was canceled while the employee was in a leave without pay status, the approved change in coverage will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(4) The evidence of insurability provision applies only to:

(A) employees who wish to enroll in Elections III or IV optional term life insurance, except as otherwise provided in subsection (k) of this section;

(B) employees who wish to enroll in or increase optional term life insurance or disability income insurance after the initial period for enrollment;

(C) employees, retirees, or eligible dependents who wish to enroll in HealthSelect of Texas after the initial period for enrollment, except as provided in subsections (a), (g)(4)-(5), and (h)(6)-(9) of this section and §81.3(b)(3)(B) of this title (relating to Administration);

(D) employees enrolled in the program whose coverage was dropped or canceled, except as otherwise provided in subsection (k) of this section; and

(E) retirees who wish to enroll in minimum optional life insurance coverage or dependent life insurance coverage as provided in subsection (c)(3) of this section.

(5) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO coverage may do so:

(A) during the annual enrollment period (coverage will become effective on September 1); or

(B) upon the occurrence of a qualifying life event as provided in paragraph (1) of this subsection.

(6) A participant who is enrolled in a approved HMO and who permanently moves out of the HMO service area shall make one of the following elections, to become effective on the first day of the month following the date on which the participant moves out of the HMO service area:

(A) enroll in another approved HMO for which the participant and all covered dependents are eligible; or

(B) if the participant and all covered dependents are not eligible to enroll in an approved HMO; either:

(i) enroll in HealthSelect of Texas without providing evidence of insurability; or

(ii) enroll in an approved HMO if the participant is eligible, and drop any ineligible covered dependent, unless not in compliance with §81.11(a)(2) of this title (relating to Termination of Coverage).

(7) When a covered dependent of a participant permanently moves out of the participant's HMO service area, the participant shall make one of the following elections, to become effective on the first day of the month following the date on which the dependent moves out of the HMO service area:

(A) drop the ineligible dependent, unless not in compliance with §81.11(a)(2) (relating to Termination of Coverage);

(B) enroll in an approved HMO if the participant and all covered dependents are eligible; or

(C) enroll in HealthSelect of Texas without providing evidence of insurability if the participant and all covered dependents are not eligible to enroll in an approved HMO.

(8) An eligible participant will be allowed an annual opportunity to make changes in coverages.

(A) A participant will be allowed to:

(i) change from one HMO to another HMO;

(ii) change from HealthSelect of Texas to an HMO;

(iii) apply for coverage in HealthSelect, if eligible, subject to approval of evidence of insurability;

(iv) select in-area or out-of-area coverage in HealthSelect of Texas based on an out-of-area residential zip code and an in-area work zip code;

(v) enroll in a dental plan;

(vi) change dental plans;

(vii) enroll eligible dependents in an HMO or dental coverage;

(viii) enroll eligible dependents in HealthSelect of Texas, without evidence of insurability, if the participant is enrolled in HealthSelect of Texas and does not reside in any HMO service area;

(ix) enroll themselves and their eligible dependents in an eligible HMO and in a dental plan from a declined or canceled status;

(x) add, decrease or cancel eligible coverage, unless prohibited by §81.11(a)(2) (relating to Termination of Coverage); and

(xi) apply for coverage for which evidence of insurability is required as provided in paragraph (3) of this subsection.

(B) Surviving dependents and former COBRA unmarried children are not eligible for the provisions in subparagraph (A)(iv), (vii), or (viii) of this paragraph, except that a surviving dependent or former COBRA unmarried child may enroll an eligible dependent in dental insurance coverage if the dependent is enrolled in health insurance coverage.

(C) Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. Coverage selected during the annual enrollment period will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1.

(9) A participant who is a retiree or a surviving dependent, or who is in a direct pay status, may decrease or cancel any coverage at any time unless such coverage is health insurance coverage ordered by a court as provided in §81.5(d) (relating to Eligibility).

(i) Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees who enroll in disability coverage. The exclusion for benefit payments shall not apply after the first six consecutive months that the employee has been actively at work or after the employee's disability coverage has been continuously in force for 12 months for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to a medical condition resulting from congenital or birth defects.

(j) Special provisions relating to term life benefits

(1) An employee or annuitant who is enrolled in the group term life insurance plan may file a claim for an accelerated life benefit for himself or his covered dependent in accordance with the terms of the plan in effect at that time. An accelerated life benefit paid will be deducted from the amount that would otherwise be payable under the plan.

(2) An employee or annuitant who is enrolled in the group term life insurance plan may make, in conjunction with receipt of a viatical settlement, an irrevocable beneficiary designation in accordance with the terms of the plan in effect at that time.

(k) Re-enrollment in the program.

(1) The provisions of subsection (a) of this section shall apply to the enrollment of an employee who terminates employment and returns to active duty within the same contract year, who transfers from one department to another, or who returns to active duty after a period of leave without pay during which coverage is canceled.

(2) An employee to whom paragraph (k)(1) applies shall not be required to submit evidence of insurability acceptable to the carrier to re-enroll in the coverages in which the employee was previously enrolled. Provided that all applicable preexisting conditions exclusions were satisfied on the date of termination, transfer, or cancellation, no new preexisting conditions exclusions will apply. If not, any remaining period of preexisting conditions exclusions must be satisfied upon re-enrollment.

(3) If an employee is a member of the Texas National Guard or any of the reserve components of the United States armed forces, and the employee's coverages are canceled during a period of leave without pay or upon termination of employment as the result of an assignment to active military duty, the period of active military duty shall be applied toward satisfaction of any period of preexisting conditions exclusions remaining upon the employee's return to active employment.

(l) Continuing coverage in special circumstances.

(1) Continuation of coverages for terminating employees. A terminating employee is eligible to continue all coverages through the last day of the month in which employment is terminated.

(2) Continuation of coverages for employees in a leave without pay status.

(A) An employee in a leave without pay status may continue the coverages in effect on the date the employee entered that status for the period of leave, but not more than 12 months. The employee must pay premiums directly as provided in §81.3(b)(2)(B)(i) of this title (relating to Administration).

(B) An employee whose leave without pay is a result of the Family and Medical Leave Act of 1993 will continue to receive the state contribution during such period of leave without pay. The employee must pay premiums directly as defined in §81.3(b)(2)(B)(i) of this title. Failure to make the required payment of premiums by the due date will result in the cancellation of all coverages except for member only health and basic life coverage. The employee will continue in the health plan in which he or she was enrolled immediately prior to the cancellation of all other coverages. If a premium beyond the state contribution for member only health and basic life coverage is owed, the employee must make the required payment of premiums directly to the employing department upon return to active duty.

(3) Continuation of coverages for a former member or employee of the legislature. Provided that the required premiums are paid, the health, dental, and life insurance coverages of a former member or employee of the legislature may be continued on conclusion of the term of office or employment.

(4) Continuation of coverages for a former judge. A former State of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the coverages that were in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. These coverages may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment.

(5) Continuation of health and dental coverage for a surviving spouse and/or dependent child/children of a deceased employee or retiree. The surviving spouse and/or dependent child/children of a deceased employee/retiree, who, in accordance with §81.5(k)(1) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee/retiree dies, provided all group insurance premiums due for the month in which the employee/retiree died and for the election/enrollment period have been paid in full.

(6) Continuation of health and dental coverage for a covered employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), whose work hours have been reduced such that the employee is no longer eligible for the program as an employee, or whose coverage has ended following the maximum period of leave without pay as provided in paragraph (2)(A) of this section. An employee, his or her spouse and/or dependent child/children, who, in accordance with §81.5(k)(2) of this title, elects to continue health and dental coverages may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the employee's coverage ends, provided all group insurance premiums due for the month in which the coverage ends and for the election/enrollment period have been paid in full.

(7) Continuation of health and dental coverage for a spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children (not provided for by §81.5(a) of this title) of an employee/retiree who, in accordance with §81.5(k)(4) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all group insurance premiums due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(8) Continuation of health and dental coverage for a dependent child under 25 years of age who marries. A dependent child under 25 years of age who marries and who, in accordance with §81.5(k)(5) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child's marriage occurred, provided all group insurance premiums due for the month in which the dependent child's marriage occurred and for the election/enrollment period have been paid in full.

(9) Continuation of health and dental coverage for a dependent child who has attained 25 years of age. A 25-year-old dependent child (not provided for by §81.5(d) of this title of an employee/retiree who, in accordance with §81.5(k)(6) of this title, elects to continue coverage may do so by submitting the required election notification and enrollment forms to the system. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the system on or before the date indicated on the continuation of coverage enrollment form. Continuing coverage will begin on the first day of the month following the month in which the dependent child of the employee/retiree attains 25 years of age, provided all group insurance premiums due for the month in which the dependent child attained age 25 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of health and dental coverages for certain spouses and/or dependent child/children of former employees who are continuing coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving spouse and/or dependent child/children of a deceased former employee, who, in accordance with §81.5(k)(7)(A) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(k)(7)(B) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child under 25 years of age who marries, who, in accordance with §81.5(k)(7)(C) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child marries.

(D) A dependent child who has attained 25 years of age, who, in accordance with §81.5(k)(7)(D) of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System of Texas. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System of Texas on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 25.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (5)-(10) of this subsection means the continuation of only health and dental coverage benefits which meet the following requirements.

(A) Type of benefit coverage. The coverage shall consist of only the health and dental coverages, which, as of the time the coverage is being provided, are identical to the health and dental coverages provided for a similarly situated person for whom a cessation of coverage event has not occurred.

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 18th calendar month of the continuation period;

(ii) in the case of loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(k)(3) of this title, the last day of the 29th calendar month of the continuation period;

(iii) in any case other than loss of coverage due to termination of an employee's employment, reduction in work hours, or end of maximum period of leave without pay, the last day of the 36th calendar month of the continuation period;

(iv) the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v) the date on which coverage ceases under the plan due to failure to make timely payment of any premium required as provided in §81.3(b)(2)(B)(ii) and (iii) of this title (relating to Administration);

(vi) the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion;

(vii) the date on which the participant, covered under any other group health plan that subjects him or her to a preexisting conditions limitation or exclusion that was not satisfied by the service credit provisions of Public Law 104-91 (HIPAA), is no longer subject to the preexisting conditions limitation or exclusion in the other plan;

(viii) the date on which the participant, after the date of election, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Premium requirements. The premium for a participant during the continuation coverage period will be 102% of the employee's/retiree's health and dental coverages only rate and is payable as provided in §81.3(b)(2)(B)(ii) of this title (relating to Administration).

(i) The premium for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's health and dental coverages only rate for the 19th through 36th months of coverage and is payable as provided in §81.3(b(2)(B)(ii) of this title (relating to Administration).

(ii) The premium for a participant eligible for 29 months of coverage will be 150% of the employee's/retiree's health and dental coverages only rate for the 19th through 29th months of coverage and is payable as provided in §81.3(b)(2)(B)(iii) of this title (relating to Administration).

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue coverage under the provisions of §81.5(k)(1)-(6) of this title (relating to Eligibility).

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues health and dental coverages for the maximum period as provided in subparagraph (B)(i)-(iii) of this section. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

(12) Continuation coverage for a former board member. Provided that the required premiums are paid, the health, dental, and life insurance coverages of a former member of a board or commission, or of the governing body of an institution of higher education, as both are described in Section 1551.109 of the Act, may be continued on conclusion of service if no lapse in coverage occurs after the term of office. Life insurance will be reduced to the maximum amount for which the former member is eligible.

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 December 11, 2003.

TRD-200308535

Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: December 31, 2003
Proposal publication date: November 7, 2003
For further information, please call: (512) 867-7125

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3, 85.7, 85.9

The Employees Retirement System of Texas (ERS) adopts §§85.1, 85.3, 85.7 and 85.9, concerning the State of Texas Employees Flexible Benefit Program (Texflex), without changes to the proposed text as published in the November 7, 2003, issue of the *Texas Register* (28 TexReg 9739).

The amendment to §85.1 is adopted to clarify the definition of dependent care and health care reimbursement accounts, employee health care expenses and the Texas Employees Group Benefit Program. The definitions of the two reimbursement accounts were expanded to further explain the structure and purpose for the accounts. The definition of the Texas Employees Group Benefits Program provides a statutory reference for the renamed comprehensive benefit program for all state employees and certain employees of institutions of higher education.

The amendments to §85.3 and §85.7 are adopted to clarify the definition of the Texas Employees Group Benefits Program which provides a statutory reference for the renamed comprehensive benefit program for all state employees and certain employees of institutions of higher education. The plan administrator has been updated to reflect that duties may be performed by designees of the retirement system.

The amendment to §85.9 is adopted to clarify the process for adjudicating claims under the dependent care and health care reimbursement accounts, including electronic adjudication using the debit card. This section also specifies the period of time in which transactions must occur to be considered eligible during that plan year. The plan administrator has been updated to reflect that duties may be performed by designees of the retirement system.

No comments were received on these proposed amendments.

The rules are adopted under Insurance Code, Chapter 1551, §1551.052 and affect Insurance Code Chapter 1551, §1551.206.

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 December 11, 2003.

TRD-200308534
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: December 31, 2003
Proposal publication date: November 7, 2003
For further information, please call: (512) 867-7125

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2002, 2003, and 2004 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-1203-26-I), was filed on December 11, 2003.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2002, 2003, and 2004 model vehicles.

A copy of the petition, including a 229-page exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-1203-26-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on January 26, 2004 to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P.O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200308527
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 11, 2003

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Building and Procurement Commission

Title 1, Part 5

In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000 issue of the *Texas Register* (25 TexReg 9965), and pursuant to the Texas Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review and consider for re-adoption, re-adoption with amendments or repeal of Chapter 112, §§112.1-112.7, concerning human resources programs.

TBPC seeks to determine whether the basis for the original adoption of each rule in Chapter 112 continues to exist and whether the rules remain valid and applicable.

Comments on the proposed review may be submitted in writing to Cynthia de Roch, General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may be sent via email to travis.langdon@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within thirty (30) days of the publication date.

TRD-200308541
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: December 12, 2003

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Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board, files this notice of intention to review Texas Administrative Code, Title 22, Chapters 277, 279 and 280, pursuant to the requirements of Texas Government Code §2001.039. This section requires all state agencies to review their rules every four years. After an assessment that the reasons for initially adopting the rules continue to exist, the agency's rules may be considered for readoption.

The agency has conducted a preliminary assessment of the following rules in Chapters 277, 279 and 280, and has determined that the reasons for initially adopting the rules continue to exist:

Chapter 277. Practice and Procedure

§277.1. Complaint Procedures

§277.2. Disciplinary Proceedings

§277.3. Probation

§277.4. Reinstatement

§277.5. Felony Convictions

§277.6. Administrative Fines and Penalties

§277.7. Patient Records

Chapter 279. Interpretations

§279.1. Contact Lens Examination

§279.2. Contact Lens Prescriptions

§279.3. Spectacle Examination

§279.4. Spectacle and Ophthalmic Devices Prescriptions

§279.5. Dispensing Ophthalmic Materials

§279.9. Advertising

§279.11. Relationship with Dispensing Optician -- Books and Records

§279.12. Relationship with Dispensing Optician -- Separation of Offices

§279.13. Board Interpretation Number Thirteen (Practice at Industrial Site, School or Nursing Home)

§279.14. Patient Files

§279.15. Board Interpretation Number Fifteen (Practice with Contagious Disease)

Chapter 280. Therapeutic Optometry

§280.1. Application for Certification

§280.2. Required Education

§280.3. Certified Therapeutic Optometrist Examination

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry

§280.7. Optometric Health Care Advisory Committee

§280.8. Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation

§280.9. Application for Licensure as Optometric Glaucoma Specialist

§280.10. Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs

§280.11. Treatment of Glaucoma by an Optometric Glaucoma Specialist

The agency invites comments from the public regarding whether the reasons for initially adopting these rules continue to exist. Comments on the proposal may be submitted to Chris Kloeris, Executive Director,

Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Apart from the review process, the agency proposes to amend Section 277.5 to clarify classes of convictions that are connected to the practice of optometry. These proposed amendments will be filed separately in the *Texas Register*.

TRD-200308574
Chris Kloeris
Executive Director
Texas Optometry Board
Filed: December 15, 2003

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter B, §§291.31 - 291.34 and §291.36, concerning Community Pharmacy (Class A), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

In conjunction with this review, the agency is proposing amendments to Chapter 291, Subchapter B, §§291.31 - 291.34 and §291.36, published elsewhere in this issue of the *Texas Register*.

Comments regarding whether the reason for adopting the rules continue to exist, may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., January 28, 2004.

TRD-200308585
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: December 15, 2003

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Adopted Rule Review

Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of intent to review published in the October 31, 2003 issue of the *Texas Register*, (28 TexReg 9549), the Texas Water Development Board (the board) has reviewed and considered for readoption 31 TAC, Part 10, Chapter 354, Memoranda of Understanding, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because they authorize the board to enter into memorandum of understanding with other state agencies and requires their adoption by rule. As a result of the review, the board adopts amendments to §354.4. Amendments also were proposed to §354.1. The board is delaying action of these proposed amendments, but anticipates taking action to adopt them by April 30, 2004. This completes the board's review of 31 TAC Chapter 354.

TRD-200308633
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: December 17, 2003

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §50.9(g)(12)(C)

% of AMGI	# of Rent Restricted Units (a)	Percentage of Rent Restricted Units (a/b)		Weight A	OR	Weight B	Points
50%	(a) _____	_____	X	10		15	_____
40%	(a) _____	_____	X	20		30	_____
						TOTAL POINTS=	_____
TOTAL LI TARGETED UNITS*	(b) _____					ROUNDED TOTAL POINTS =	_____
*Includes all Low Income Units							

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-2	Commercial Facility Bond Form	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	**Application to Inject Fluid into a Reservoir Productive of Oil or Gas**	**2/04**	**3.46**
H-1A	**Injection Well Data for H-1 Application**	**2/04**	**3.46**
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
PR	**Monthly Production Report**	**2/04**	**3.27, 3.54, 3.58**
[~~P-1~~]	[~~Producer's Monthly Report of Oil Wells~~]	[~~1/96~~]	[~~3.27, 3.58~~]
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
[~~P-2~~]	[~~Producer's Monthly Report of Gas Wells~~]	[~~1/96~~]	[~~3.27, 3.54~~]
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling / Measurement Application Supplement	6/97	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well (East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99 T-4A: 4/99 T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter [**to be revised**]	**2/04** ~~**9/01**~~	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	**Directional Well Information**	**2/04**	**3.5**
W-1H	**Horizontal Well Information**	**2/04**	**3.5**
W-1X	Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit	10/03	3.14, 3.78
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	2/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	Notification of Regulated Waste Activity (not an RRC form but required)	12/99	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)

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.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 5, 2003, through December 11, 2003. The public comment period for these projects will close at 5:00 p.m. on January 16, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Coastal Bend Bays & Estuaries Program (CBBEP); Location: The project is located at Indian Point Park, in Portland, Texas, south of the U.S. 181 Causeway, between Corpus Christi Bay and Nueces Bay. The project can be located on the U.S.G.S. quadrangle map entitled: Portland, Texas. Approximate UTM Coordinates: Zone 14; Easting: 661640; Northing: 3081303. Project Description: The applicant proposes to stabilize 2,100 feet of eroding shoreline by constructing a curved, offshore breakwater that would be 1,720 feet long and +2 to +6 feet high mean low tide (MLT) and backfilling a portion of the 19-acre area between it and the existing shoreline to intertidal elevations sufficient to support the establishment of marsh vegetation. The breakwater would be located between 300 to 750 feet offshore extending from an existing rock jetty southeast to the existing beach shoreline at the northwestern end of the project site. The entire project would result in filling of 4.5 acres of shallow water habitat in Corpus Christi Bay. Depths in the project area range from 0 to -3 feet MLT. The applicant states that submerged aquatic vegetation is not present within the project site. Two possible breakwater design options are proposed:

Option A: The offshore breakwater would be constructed of rock-filled wire gabions. Approximately 1,300 linear feet of the breakwater would be +6 MLT feet high and the remainder of the breakwater would be +2 feet high MLT to permit tidal exchange. The breakwater would be placed on a scour pad that would be 12 to 15 feet wide and 1 foot high with allowance for 0.5 to 1.0 foot for settling. The gabion breakwater would cover 0.6 acre of shallow water habitat.

Option B (applicant's preferred option): The offshore breakwater would be constructed of 15,000 cubic yards of loose rock riprap. Approximately 1,300 linear feet of the breakwater would be +6 feet high MLT and 44 feet wide; the remainder of the breakwater would be +2 feet high MLT and 29 feet wide. The riprap breakwater would cover approximately 1.7 acres of shallow water habitat.

Approximately 2.8 acres of shallow water habitat in Corpus Christi Bay behind the breakwater, would be backfilled to +5 feet MLT using 23,000 cubic yards of sand imported from designated inland commercial sources. The backfilled area would create an island that would provide an opportunity for a mix of vegetation to become established and bare ground area for nesting substrate. Fill material would be deposited by dump truck on the fill site and allowed to distribute throughout the area by wind and wave action. The remaining 15 acres behind the breakwater would be left as an open water lagoon. Construction access would be through the northwestern corner of the project site adjacent to the frontage road of US 181 where there is an existing gravel area, and from the existing parking lot at the southeastern corner near the concession building and fishing pier. Construction staging for equipment and material storage will be located in uplands onsite to avoid impacts to existing waters of the United States, including wetlands. All work would be from the land and breakwater as it is constructed. All construction access and staging areas would be restored to pre-project contours after project completion.

To compensate for the direct impact of approximately 4.5 acres of subtidal area, the proposed mitigation would be the habitat enhancement resulting from the project implementation, which will result in the creation of a calm, protected, shallow, open-water lagoon within Corpus Christi Bay that could support seagrass beds, the construction of a 4.0-acre sand island adjacent to the breakwater that will support approximately 2 acres of intertidal marsh and mixed woody vegetation, and the preservation of approximately 21 acres of existing marsh, shallow-water lagoons, and associated habitats with mixed vegetation within the park from ongoing erosion. The breakwater and sand backfill would be monitored quarterly for re-vegetation during the first growing season and then twice a year for subsequent monitoring periods as specified by the Corps. The applicant would maintain the site and be responsible for maintenance activities, including erosion control, site protection, fencing, and signage.

The stated project purpose is: 1) protection of the existing shoreline from wind and wave driven erosion and 2) protection of the remaining marsh and associated coastal habitats adjacent to the shoreline. CCC Project No.: 03-0386-F1; Type of Application: U.S.A.C.E. permit application #23056 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). NOTE: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

Applicant: Willacy County Navigation District; Location: The project is located at the intersection of State Highway 186 and Water Street in Port Mansfield, at the entrance of the Port Mansfield Harbor in Willacy County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Mansfield, Texas. Approximate UTM Coordinates: Zone 14; Easting: 656950; Northing: 2938350. Project Description: The applicant proposes to place fill to reclaim an eroded shoreline area and an existing boat ramp to create a subdivision, and to construct 13 covered boat slips along the entrance channel of the Port Mansfield Harbor. Approximately 1,000 feet of shoreline would be bulkheaded using concrete sheet pile. The sheet pile walls would be driven in first and then 7,000 cubic yards of fill material from upland sites placed behind the walls as backfill. Approximately 0.207 acre area would be filled below mean high tide (MHT) to fill in the existing boat ramp area

and to backfill behind the proposed sheet pile wall. Land-based equipment would be used to mechanically excavate approximately 1,750 cubic yards of material along the south boundary of the property to create the boat slips. The excavated material would be placed within the project site and used as fill on the upland lots. The site would be ringed with a continuous silt fence to minimize runoff from the project site. The dredged area would have a depth of -4 feet MHT at the bulkhead and -7 feet MHT at the end of the boat slips. Twelve of the slips would be 30 feet long and 12 feet wide, while the thirteenth would be 30 feet long and 15 feet wide. The concrete pilings for the boat slip walkways would be driven in by equipment mounted on barges. A 3-foot-wide by 30-foot-long walkway would be constructed between each slip. A 6-foot-wide walkway would be constructed along the back of the proposed boat slips with two 8-foot-wide sections, one 50 feet in length and the other 60 feet in length, constructed in the areas where there will not be any boat slips. CCC Project No.: 03-0392-F1; Type of Application: U.S.A.C.E. permit application #23151 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200308626
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 17, 2003

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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, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 12/22/03 - 12/28/03 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 12/22/03 - 12/28/03 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 01/01/04 - 01/31/04 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 01/01/04 - 01/31/04 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200308616
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 17, 2003

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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 West Texas Credit Union (El Paso) seeking approval to merge with Tepeyac Federal Credit Union (El Paso). West Texas Credit Union will be 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-200308621
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 17, 2003

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Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from Associated Credit Union, Deer Park, Texas. The credit union is proposing to change its name to Associated Credit Union of Texas.

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-200308623
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 17, 2003

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Lone Star Credit Union, Dallas, Texas - See *Texas Register* issue dated September 26, 2003.

Texas Employees Credit Union, Dallas, Texas - See *Texas Register* issue dated September 26, 2003.

Houston Energy Credit Union, Houston, Texas - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#1) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#4) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#8) - See *Texas Register* issue dated September 26, 2003.

1st University Credit Union, Waco, Texas - See *Texas Register* issue dated September 26, 2003.

Application(s) to Expand Field of Membership - Denied

Community Credit Union, Plano, Texas (#2) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#3) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#5) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#6) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#7) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#9) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#10) - See *Texas Register* issue dated September 26, 2003.

Community Credit Union, Plano, Texas (#11) - See *Texas Register* issue dated September 26, 2003.

Application(s) to Amend Articles of Incorporation - Approved

Dallas County Employees Credit Union, Dallas, Texas - See *Texas Register* issue dated October 31, 2003.

Application(s) for a Merger or Consolidation - Approved

J&J Employees Credit Union (Sherman) and My Federal Credit Union (Bedford) - See *Texas Register* issue dated August 29, 2003.

TRD-200308622
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 17, 2003

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Texas Education Agency

Notice of Correction for Applications Concerning Limited English Proficient (LEP) Student Success Initiative

The Texas Education Agency (TEA) published Request for Application (RFA) #701-04-010 concerning the Limited English Proficient (LEP) Student Success Initiative in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10550).

The TEA is amending the Dates of Project paragraph in the *Texas Register* Notice to read, "The Limited English Proficient Student Success Initiative will be implemented during the 2003-2004 and 2004-2005 school years. Applicants should plan for a starting date of no earlier than March 15, 2004, and an ending date of no later than August 31, 2005." This correction reflects a change from the original beginning date of February 2, 2004.

The TEA is amending the Deadline for Receipt of Applications paragraph in the *Texas Register* Notice to read, "Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. Central Time, Tuesday, February 24, 2004, to be considered for funding." This correction reflects a change from the original deadline for receipt of applications from Thursday, February 5, 2004.

Further Information. For clarifying information about the RFA, contact Christi Martin, Office of Education Initiatives, TEA, (512) 463-6630.

TRD-200308620
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: December 17, 2003

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Texas Commission on Environmental Quality

Notice of District Petition

Notices mailed December 11, 2003

TCEQ Internal Control No. 10072003-D13; Polk County Fresh Water Supply District No. 2 has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operations and maintenance standby fee up to $24.00 per equivalent single family connection (ESFC) for calendar years 2004-2006, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TCEQ. The Commission may approve the annual standby fees as requested, or it may approve a lower annual standby fee, but it shall not approve an annual standby fee greater than the amount requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operations and maintenance costs and debt service of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater or drainage facilities or services available. Any revenues collected from the operations and maintenance standby fees shall be used to supplement the District's operations and maintenance account.

TCEQ Internal Control No. 08012003-D10; Texas National Municipal Utility District of Montgomery County has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operations and maintenance standby fee of $84.00 per equivalent single family connection (ESFC) for calendar years 2004-2006, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TCEQ. The Commission may approve the annual standby fees as requested, or it may approve a lower annual standby fee, but it shall not approve an annual standby fee greater than the amount requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed.

A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operations and maintenance costs and debt service of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater or drainage facilities or services available. Any revenues collected from the operations and maintenance standby fees shall be used to supplement the District's operations and maintenance account.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on these petitions 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 which would satisfy your concerns. 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 petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the 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, 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.

TRD-200308618
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 17, 2003

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Notice of Opportunity to Comment on Settlement Agreements 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 **January 26, 2004**. 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within 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. 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 January 26, 2004**. 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 should be submitted to the commission in **writing**.

(1) COMPANY: Car Shine, Inc. dba Copperfield Car Wash; DOCKET NUMBER: 2002-0680-PST- E; TCEQ ID NUMBER: 0060388; LOCATION: 7310 Highway 6 North, Houston, Harris County, Texas; TYPE OF FACILITY: car wash with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks (USTs); 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit a UST registration and self-certification; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into a UST system; and 30 TAC §334.50(b)(1)(A), (2)(A), and (d)(4)(A)(i), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month, to provide proper release detection for the piping, and to conduct inventory control in conjunction with automatic tank gauging; PENALTY: $7,500; STAFF ATTORNEY: Benjamin Joseph de Leon, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(2) COMPANY: Equistar Chemicals, L.P., formerly known as Occidental Chemical Corporation; DOCKET NUMBER: 95-0386-AIR-E; TCEQ ID NUMBER: NE-0051-B; LOCATION: 1561 McKinzie Road, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: butadiene production plant; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code (THSC), §382.085(a) and (b), by emitting one or more air contaminants, or combinations thereof, in such concentration and of such duration to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; 30 TAC §101.201 and THSC, §382.085(b), by failing to report an upset condition; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by allowing unpermitted utilization of the butadiene flare for combustion of off-specification butadiene feedstock which had been unloaded from a barge and trucked to the plant; and 30 TAC §116.116(a) and THSC, §382.085(b), by failing to make representations in the application for utilization of the butadiene flare for combustion of off- specification butadiene feedstock which had been unloaded from a barge

and trucked to the plant; PENALTY: $0; Order terminating Agreed Order TCEQ Docket Number 95-0386-AIR-E; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Ste. 1200, Corpus Christi, Texas 78412- 5503, (361) 825-3100.

(3) COMPANY: Fort Hancock Water Control and Improvement District; DOCKET NUMBER: 2001-0590-MWD-E; TCEQ ID NUMBER: 11173-001; LOCATION: north of Texas Highway 20, one mile southeast of Fort Hancock, Hudspeth County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §30.350(d) and TCEQ Water Quality Permit Number 11173-001, Section VI, Special Provision Number 2, by failing to employ an operator holding a valid Class D wastewater certification of competency or higher; 30 TAC §305.125 and §319.5(a) and TCEQ Water Quality Permit Number 11173-001, Section VI, Special Provision Number 3, and Part IV(B), Monitoring Requirements, by failing to properly maintain and operate the facility in order to achieve optimum efficiency; 30 TAC §305.125 and TCEQ Water Quality Permit Number 11173-001, Section VII, Standard Provisions Number 2.a., by failing to orally report a discharge which endangered human health or safety or the environment within 24 hours of becoming aware of the discharge and failing to submit a written report of noncompliance within five working days; and TWC, §26.121 and TCEQ Water Quality Permit Number 11173-001, Section VII, Standard Provisions Number 2.b., by failing to prevent unauthorized discharge of wastewater into or adjacent to waters in the state; PENALTY: $11,250; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: George Peoples dba Douglass General Store; DOCKET NUMBER: 2002-0307- PST-E; TCEQ ID NUMBER: 0002202; LOCATION: Route 1, Box 2275 on Farm-to-Market Road 21 West, Douglass, Nacogdoches County, Texas; TYPE OF FACILITY: retail gasoline station; RULES VIOLATED: 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for the bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §26.3475(d), by failing to have corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain records relating to the operation and maintenance of a UST system for at least five years; PENALTY: $4,500; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Ideal Gas, Inc. and Ideal Gas, Inc. dba M&M Grocery; DOCKET NUMBER: 2001-0802-PST-E; TCEQ ID NUMBERS: 58526 and 19912; LOCATIONS: 511 East State Highway 114, Levelland, Hockley County, and the intersection of State Highway 114 and Farm-to-Market Road 1780, Whiteface, Cochran County, Texas; TYPE OF FACILITY: operates and delivers petroleum products; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I) and (4)(B) and TWC, §26.346(a), by failing to submit a TCEQ UST registration and self-certification form for all regulated UST systems; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certification before the delivery of a regulated substance into the UST; and 30 TAC §334.5(b)(1)(A), by failing to verify or observe a valid, current TCEQ delivery certificate prior to depositing any regulated substance into the UST system; PENALTY: $3,920; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(6) COMPANY: Sonora Investments, LLC dba Sonora Industrial Park; DOCKET NUMBER: 2002- 0280-PWS-E; TCEQ ID NUMBER: 2180004; LOCATION: 3619 Cityhill Road, Sonora, Sutton County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(d)(2)(A), by failing to maintain a chlorine residual of 0.2 milligrams/liter in the far reaches of the distribution system at all times; 30 TAC §290.109(c)(3) and THSC, §341.033(d), by failing to submit repeat coliform monitoring samples; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence around a well; 30 TAC §290.41(c)(3)(K), by failing to seal the casing at the south well; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the wells; and 30 TAC §290.46(v), by failing to provide a securely mounted conduit for the electrical wiring at the north well, the south well, and at the electrical control boxes leading to each well; PENALTY: $2,438; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200308596
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 16, 2003

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Notice of Water Rights Application

Notice mailed December 15, 2003

APPLICATION NO. 4187A; Curtis Harry Mahla Revocable Trust, 23201 Barry Lane, Little Rock, Arkansas, 72210, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Amendment to a Water Use Permit pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Water Use Permit No. 3881 (Application No. 4187) authorizes the diversion and use not to exceed a maximum of 666 acre-feet of water per annum from Leon Creek, tributary of the Medina River, tributary of the San Antonio River, San Antonio River Basin, at a maximum diversion rate of 5.4 cfs (2,400 gpm) for agricultural purposes to irrigate 333 acres out of a 400 acre tract, located in the Fernando Rodriguez Survey No. 16, Abstract No. 15, Bexar County. Curtis Harry Mahla, trustee for the Curtis Harry Mahla Revocable Trust has acquired a portion of Water Use Permit No. 3881 (Application No. 4187) which authorizes the permittee to divert and use not to exceed 333 acre-feet of water per annum at a rate of 2.7 cfs (1,200 gpm) for agricultural purposes to irrigate 166.500 acres of land out of 227.283 acres, referred to as Tract 1, located in the Fernando Rodriguez Survey No. 16, Abstract No. 15, Block 4005, Bexar County. Applicant seeks authorization to amend Water Use Permit No. 3881 (Application No. 4187) to add an additional diversion area between Latitude 29.28 N, Longitude 98.57 W (Point A) and Latitude 29.27 N, Longitude 98.55 W (Point B) located approximately 75 feet upstream of the existing diversion point, change the diversion rate to a combined rate of 8.021 cfs (3,600 gpm) and increase the land to be irrigated to 200 acres. Pursuant to TAC 297.45 and TWC 11.122, granting of an application for an amendment to a water right shall not cause an adverse impact to an existing water right. The application was received on May 27, 2003. Additional information and fees were received on August 18, 2003. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 8, 2003. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information

section below, within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

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 TCEQ Office of the Chief Clerk at the address provided in the information section 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, 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 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.

TRD-200308619
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 17, 2003

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Texas Ethics Commission

Correction of Error

On October 22, 1997, the Texas Ethics Commission submitted for publication a notice listing the names of persons who did not file reports or who failed to pay penalty fines for late reports, in reference to certain listed filing deadlines.

The notice was published in the October 31, 1997, issue of the *Texas Register* (22 TexReg 10794).

The notice contained an error. Mr. Richard T. Hudgins, Wharton County Republication Executive Committee, P.O. Box 831, Wharton, TX 77488, was erroneously included in the notice. His name appeared on page 10795 under the reference to the County Executive Committee Semi-Annual Campaign Finance Report due by July 15, 1997. Mr. Hudgins's name should not have been included in that list.

TRD-200308602

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List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual J/COH Report due July 15, 2003

Le Roy Gillam, 13031 Abalone Way, Houston, Texas 77044

Gary A. Hinchman, 17 Paddock Pl., The Woodlands, Texas 77382

Alice Oliver-Parrott, 480 Thunder Canyon Rd., Canyon Lake, Texas 78133-5459

Deadline: Semiannual GPAC Report due July 15, 2003

Weldon Adams, Political Action Committee of the Lubbock Assn. Of Insurance Agents, 1115 San Jacinto, Suite 100, Austin, Texas 78701

Mike Martin, Galveston Bay Political Education Fund, 909 Fannin, Ste. 3700, Houston, Texas 77010

Margaret W. Hall, Texas National Organization for Women PAC, 1920 Hawthorne, Houston, Texas 77098

Frank Fuentes, Hispanic Contractors Assn. De Tejas, Inc. PAC, 4100 Ed Bluestein #201, Austin, Texas 78721

Deadline: 8 Day Before an Election due October 27, 2003

Lenora Sorola-Pohlman, Harris County Tejano Democrats, 2314 Tannehill Dr., Houston, Texas 77008

Deadline: Monthly MPAC Report Due September 5, 2003

Carvel McNeil Jr., Houston Police Patrolmen's Union PAC, 1900 N. Loop West #540, Houston, Texas 77018

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 400 Valley Cove Dr., Richardson, Texas 75080-1843

Jennifer N. Stevens, Texas Assn. Of Preferred Providers Organizations PAC, 816 Congress Ave., Ste. 1100, Austin, Texas 78701-2471

L. Rena Thompson, Women in Commerce, 9898 Bissonnet, Ste. 284, Houston, Texas 77036

Deadline: Monthly MPAC Report Due October 6, 2003

Carvel McNeil Jr., Houston Police Patrolmen's Union PAC, 1900 N. Loop West #540, Houston, Texas 77018

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 400 Valley Cove Dr., Richardson, Texas 75080-1843

Jennifer N. Stevens, Texas Assn. Of Preferred Providers Organizations PAC, 816 Congress Ave., Ste. 1100, Austin, Texas 78701-2471

L. Rena Thompson, Women in Commerce, 9898 Bissonnet, Ste. 284, Houston, Texas 77036

TRD-200308488
Karen Lundquist
Executive Director
Texas Ethics Commission
Filed: December 10, 2003

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Golden Crescent Workforce Development Board

Public Notice

The Texas Workforce Solutions of the Golden Crescent Administrative Office will release, on December 19, 2003, its Request for Bids for payroll services for client work experience, employment programs, occasional staffing needs, and special projects administered by the Texas Workforce Solutions of the Golden Crescent.

The Board is responsible for administering an integrated workforce development system, including job training, employment, and employment-related educational programs.

The geographic area to be served includes Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca and Victoria Counties.

A complete set of specifications may be obtained from Judy Self at 120 South Main #501, Victoria, Texas, Phone: (361) 576-5872, Fax: (361) 573-0225, or email: judy.self@twc.state.tx.us.

TRD-200308485
Judy Self
Administrative Assistant
Golden Crescent Workforce Development Board
Filed: December 10, 2003

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	e + PET Imaging V LP	L05726	Dallas	00	12/09/03
Irving	Las Colinas Pet Imaging LLP	L05724	Irving	00	12/12/03
Texas City	Sid Acharya MD PA	L05714	Texas City	00	12/04/03

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Abilene Imaging Center LLC	L05687	Abilene	02	12/01/03
Abilene	Hendrick Medical Center	L02433	Abilene	82	12/01/03
Amarillo	Baptist St Anthonys Health System	L01259	Amarillo	69	12/12/03
Arlington	Arlington Memorial Hospital Foundation Inc	L02217	Arlington	76	12/03/03
Arlington	Radiology Associates of Tarrant County PA	L05109	Arlington	14	11/26/03
Austin	Capital Cardiovascular Consultants	L05590	Austin	03	12/10/03
Austin	Texas Oncology PA	L05696	Austin	02	11/26/03
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	03	12/08/03
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	09	12/02/03
Brownsville	Brownsville Medical Center	L01526	Brownsville	34	12/05/03
Channelview	Xxtreme Pipe Services LLC	L02576	Channelview	20	12/03/03
College Station	College Station Hospital LP	L02559	College Station	54	12/15/03
Corpus Christi	Associates in Heart Disease	L05023	Corpus Christi	08	12/10/03
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	34	12/08/03
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	40	11/26/03
Dallas	Texas Oncology PA	L04878	Dallas	25	12/10/03
Decatur	Wise Regional Health System	L02382	Decatur	20	12/10/03
Deer Park	Atofina Petrochemicals Inc	L00302	Deer Park	43	12/09/03
El Paso	EP Premier Medical Group PA	L05198	El Paso	02	12/04/03
Fort Worth	Texas Oncology PA	L05606	Fort Worth	04	12/03/03
Houston	Cardiology Clinic PA	L05710	Houston	01	12/04/03
Houston	Memorial Hermann Hospital System	L01168	Houston	72	12/01/03
Houston	Vital Imaging Companies	L05405	Houston	02	12/05/03
Houston	Interventional Cardiology Associates	L05294	Houston	04	12/12/03
Humble	Northeast Medical Center Hospital	L02412	Humble	50	12/11/03
Irving	COR Specialty Associates of North Texas PA	L05373	Irving	08	12/11/03
Katy	Memorial Hermann Hospital System	L03052	Katy	36	12/04/03
La Grange	Austin Heart La Grange	L05516	La Grange	04	12/02/03
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	20	12/03/03
Laredo	Laredo Regional Medical Center LP	L02192	Laredo	30	12/10/03
Lewisville	Texas Oncology PA	L05526	Lewisville	05	12/05/03
Lubbock	University Medical Center	L04719	Lubbock	65	12/12/03
McKinney	Columbia Medical Center Subsidiary LP	L02415	McKinney	27	12/02/03

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mesquite	HMA Mesquite Hospitals Inc	L02428	Mesquite	34	12/02/03
Nacogdoches	Nacogdoches Medical Center	L02853	Nacogdoches	32	12/08/03
Nederland	Beaumont Hospital Holding Inc	L01756	Nederland	44	12/02/03
Odessa	Texas Oncology PA	L05140	Odessa	03	12/08/03
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	17	12/02/03
Port Arthur	The Medical Center of Southeast Texas LP	L01707	Port Arthur	48	12/04/03
Richardson	Richardson Cardiology Associates	L05667	Richardson	02	12/09/03
Richardson	Richardson Hospital Authority	L02336	Richardson	40	12/09/03
Round Rock	Austin Heart PA	L05456	Round Rock	07	12/02/03
San Angelo	Shannon Clinic	L04216	San Angelo	29	12/03/03
San Antonio	Cardiology Clinic of San Antonio PA	L04489	San Antonio	26	12/05/03
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	71	12/02/03
San Antonio	San Antonio Independent School District	L01918	San Antonio	10	12/03/03
San Marcos	Austin Heart PA	L05452	San Marcos	08	12/02/03
The Woodlands	Nasser Cardiology PA	L05434	The Woodlands	04	12/03/03
Throughout Tx	Computalog Wireline Services Inc	L04286	Fort Worth	51	12/09/03
Throughout Tx	Terra-Mar Inc	L03157	Fort Worth	39	12/01/03
Throughout Tx	Baker Hughes Oilfield Operation Inc	L00446	Houston	145	12/03/03
Throughout Tx	H & G Inspection Company Inc	L02181	Houston	172	12/03/03
Throughout Tx	H & G Inspection Company Inc	L02181	Houston	173	12/09/03
Throughout Tx	Perf-O-Log Inc	L05478	Iowa Colony	04	12/03/03
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	65	12/09/03
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	66	12/12/03
Throughout Tx	Fugro South Inc	L04322	Pasadena	67	12/01/03
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	34	12/09/03
Throughout Tx	Superior Energy LLC	L05540	Pearland	01	12/10/03
Throughout Tx	Midwest Inspection Services	L03120	Perryton	72	12/12/03
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	34	12/09/03
Tyler	East Texas Medical Center	L00977	Tyler	102	12/10/03
Tyler	Nutech Inc	L04274	Tyler	45	12/10/03
Tyler	Trinity Mother Francis Health System	L01670	Tyler	106	12/05/03
Webster	CHCA Clear Lake LP	L01680	Webster	59	11/26/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Cleburne	Walls Regional Hospital	L02039	Cleburne	23	12/03/03
Corpus Christi	Corpus Christi Radiology Center	L04493	Corpus Christi	12	12/12/03
Harlingen	Valley Coop Oil Mill	L02908	Harlingen	08	12/05/03
Kingwood	KPH Consolidation Inc	L04482	Kingwood	20	12/04/03
San Angelo	Shannon Medical Center	L02174	San Angelo	48	12/01/03
San Benito	Healthmont of Texas I LLC	L04567	San Benito	11	12/01/03

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Mactec Engineering & Consulting Inc	L02453	Houston	31	12/03/03

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Grapevine	Numed Imaging Centers Inc	L05016	Grapevine		12/02/03
Pasadena	CHCA Bayshore LP	L00153	Pasadena		12/02/03

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200308613
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: December 16, 2003

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Texas Health and Human Services Commission

Notice of Public Meeting - Proposed Health and Human Services Department Organizational Structure

Purpose. The Texas Health and Human Services Commission will conduct a series of public meetings to receive public comment on the proposed organizational structures of state health and human services departments created under House Bill No. 2292, 78th Legislature. The newly created departments are the Department of Family and Protective Services, Department of Assistive and Rehabilitative Services, Department of Aging and Disability Services, Department of State Health Services. The Health and Human Services Commission, in conjunction with current health and human services agencies, is developing proposed organizational structures for each new department. Copies of the proposed organizational structure for each new agency will be posted on the Health and Human Services Commission's web site at http://www.hhsc.state.tx.us/Consolidation/Consl_home.html once available.

Hearing Dates/Times. The public meetings will take place on the following dates, times, and locations:

Agency: Department of Family and Protective Services

Date and Time: January 9, 2004 at 1:00 p.m. to 4:00 p.m.

Location: Public Hearing Room 125-E of the John H. Winters Building at 701 West 51st Street, Austin, Texas

The dates, times and locations of the meetings for the Department of Assistive and Rehabilitative Services, Department of State Health Services and the Department of Aging and Disability Services will be announced at a later date.

Agenda. The agenda for each public meeting is as follows:

1. Welcome & Introduction

2. Overview of proposed agency organizational structure

3. Public comment and testimony

Comments. The public is invited to submit written comments regarding the proposed organizational structures for the new departments until 5:00 p.m. the day of the meeting. Written comments may be delivered by U.S. mail or express delivery to the attention of the Program Management Office, Health and Human Services Commission, P. O. Box 13247, Austin, Texas 78711. Hand deliveries will be accepted at 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile at (512) 424-6974.

Persons with disabilities planning to attend this meeting who need auxiliary aids or services may contact Karen Bewley, at (512) 438-5256,

no later than January 7, 2004, so that appropriate arrangements can be made.

TRD-200308625
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: December 17, 2003

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Park at Woodline Townhomes) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Ford Elementary School, 25460 Richard Road, Spring, Texas 77386, at 6:00 p.m. on January 15, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Woodline Park Apartments Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental townhome development to be located at the dead-end of Woodline Drive, approximately one-quarter mile east of the intersection of Spring Ridge Drive and Woodline Drive, Spring, Montgomery County, Texas 77386. The Development will initially be owned by the Borrower. The Development will not be subsidized with property tax exemptions or abatements.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer: at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200308598
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 16, 2003

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Texas Department of Human Services

Open Solicitation for Reagan County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324, the Texas Department of Human Services (DHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Reagan County, County #192**. Medicaid nursing facility occupancy rates in **Reagan County** exceeded the 90% occupancy threshold for six consecutive months during the period of **May 2003 through October 2003**. The county occupancy rates for each month of that period were: **92.8%, 93.0%, 92.4%, 90.5%, 94.9%, 92.4%**. In accordance with primary selection process requirements contained in 40 TAC §19.2324(b), current nursing facility licensees or property owners of currently licensed nursing facilities may apply for an additional allocation of Medicaid beds. The allocation of additional Medicaid beds is restricted to nursing facility beds that are currently licensed and may be converted to Medicaid- certified beds. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(b)(5) to Joe D. Armstrong, Texas Department of Human Services Contract and Licensure Section, Long Term Care-Regulatory, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DHS before the close of business January 26, 2004, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DHS will allocate Medicaid beds in accordance with 40 TAC §19.2324(b)(6) and (7). If the number of beds allocated under the primary selection process does not reduce the occupancy rate below 90%, DHS will place another public notice in the *Texas Register* in accordance with secondary selection process requirements.

TRD-200308586
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: December 15, 2003

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Request for Proposal for Relocation Services

The Texas Department of Human Services (DHS) announces a request for proposal (RFP) for the delivery of relocation services to Medicaid-eligible nursing facility residents, including children and young and older adults, seeking community living arrangements. DHS intends to provide relocation services statewide and will accept proposals from:

a single contractor proposing to provide statewide services;

a single contractor managing a number of sub-contractors to ensure statewide coverage; and

multiple contractors proposing to provide services in specific DHS regional sites. Site I includes DHS regions 1, 2, 9, and 10; Site II includes DHS regions 4 and 5; Site III includes DHS regions 6, 8, and 11; and Site IV includes DHS regions 3 and 7.

Offeror's Conference: A teleconference will be held from **9:00 a.m. to 11:30 a.m. Central Daylight Time on January 6, 2004,** for potential offerors to receive a briefing from DHS on this RFP and to ask questions. To participate in the teleconference, the potential offerors must submit a notification of intent to participate (including potential offeror's name, phone number, address, and contact person) to the DHS contact person by no later than **January 5, 2004.** Notification of teleconference and access details will be communicated to interested parties who respond timely to the notification of intent to participate.

Closing Date: All proposals must be **postmarked by no later than the closing date, January 26, 2004.** The original proposal and two copies must be mailed to the contact person for this RFP.

Contact Person: To obtain an RFP packet, please write to Lily Vela, Promoting Independence Initiative, DHS, 701 W. 51st Street, Mail Code W-511, Austin, TX 78751, or P.O. Box 149030, Mail Code W-511, Austin, TX 78714-9030, or fax: 512-438-5504.

TRD-200308617
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: December 17, 2003

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Texas Department of Insurance

Company Licensing

Application to change the name of AMERICAN GUARANTY TITLE COMPANY to AMERICAN GUARANTY TITLE INSURANCE COMPANY, a foreign title company. The home office is in Oklahoma City, Oklahoma.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200308624
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 17, 2003

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Texas Lottery Commission

Instant Game Number 389 "Double It"

1.0 Name and Style of Game.

A. The name of Instant Game No. 389 is "DOUBLE IT!". The play style is "match up with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 389 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 389.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000, $20,000 and STAR SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each 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. 389 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$20,000	20 THOU
STAR SYMBOL	DOUBLE

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 389 - 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 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

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 $40.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000 or $20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (389), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 389-0000001-000.

L. Pack - A pack of "DOUBLE IT!" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page, ticket 002 and 003 will be on the next page, and so on, and tickets 248 and 249 will be on the last page. Please note the books will be in an A-B 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 "DOUBLE IT!" Instant Game No. 389 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 "DOUBLE IT!" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) play symbols. Each game is played separately. In each game, if the player reveals three (3) identical amounts, the player will win that amount indicated. If the player reveals two (2) identical amounts and a the designated play symbol, STAR, the player will win double the prize indicated. 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 24 (twenty-four) 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 24 (twenty-four) 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 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 24 (twenty-four) 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 "spot for spot" play data.

B. Within a game, there will be no four or more like play symbols.

C. Within a game, no more than two (2) pairs of like play symbols on a ticket.

D. When the doubler symbol appears in a winning game, there will be no more than two like play symbol in that game.

E. No duplicate non-winning games.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE IT!" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $100, 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 "DOUBLE IT!" 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 "DOUBLE IT!" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "DOUBLE IT!" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, 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 therefore, 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 therefore, 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 therefore. 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 10,080,000 tickets in the Instant Game No. 389. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 389 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,128,960	8.93
$4	483,840	20.83
$5	241,920	41.67
$10	161,280	62.50
$20	80,640	125.00
$40	40,320	250.00
$100	15,708	641.71
$500	1,848	5,454.55
$1,000	120	84,000.00
$20,000	12	840,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.68. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 389 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. 389, 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-200308496
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 11, 2003

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Instant Game Number 392 "Tic Tac Toad"

1.0 Name and Style of Game.

A. The name of Instant Game No. 392 is "TIC TAC TOAD". The play style is "three in a line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 392 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 392.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: X SYMBOL, [ ] SYMBOL, TOAD SYMBOL, $1.00, $2.00, $3.00, $10.00, $20.00, $50.00, $100, $200, and $500.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 392 - 1.2D

PLAY SYMBOL	CAPTION
X SYMBOL	
[ ] SYMBOL	
TOAD SYMBOL	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 392 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $200, $500.

I. High-Tier Prize- No high-tier prize in this game.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (392), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 392-0000001-000.

L. Pack - A pack of "TIC TAC TOAD" Instant Game tickets contains 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 on the next page, etc.; and tickets 245 to 249 will be on the last page. Ticket 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

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 "TIC TAC TOAD" Instant Game No. 392 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 "TIC TAC TOAD" Instant Game is determined once the latex on the ticket is scratched off to expose ten (10) play symbols. If the player reveals three identical play "TOAD SYMBOLS" in

the play area on the same ticket either diagonally, vertically, or horizontally, the player will win the prize indicated. 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 10 (ten) 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, 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 10 (ten) 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 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) 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. No adjacent non-winning tickets will contain identical play symbols in the same locations.

B. No occurrence of three (3) symbols in a row, column or diagonal except the toad symbol.

C. Every ticket will contain at least four (4) toad symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "TIC TAC TOAD" Instant Game prize of $1.00, $2.00, $3.00, $10.00, $20.00, $50.00, $100, $200, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $200, 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 2.3.C of these Game Procedures.

B. As an alternative method of claiming a "TIC TAC TOAD" 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.

C. 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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

D. 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.C 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 "TIC TAC TOAD" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An instant ticket game 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 therefore, 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 therefore, 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 therefore. 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 20,160,000 tickets in the Instant Game No. 392. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 392 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,854,720	10.87
$2	1,370,880	14.71
$3	645,120	31.25
$10	161,280	125.00
$20	80,640	250.00
$50	23,940	842.11
$100	5,040	4,000.00
$200	2,688	7,500.00
$500	168	120,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.86. 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.

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. 392 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. 392, 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-200308559
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 12, 2003

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Instant Game Number 401 "Thirty One"

1.0 Name and Style of Game.

A. The name of Instant Game No. 401 is "THIRTY ONE". The play style in each game is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 401 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 401.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, and 2.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each 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. 401 - 1.2D

PLAY SYMBOL	CAPTION
A SYMBOL	ACE
K SYMBOL	KNG
Q SYMBOL	QUN
J SYMBOL	JCK
10 SYMBOL	TEN
9 SYMBOL	NIN
8 SYMBOL	EGT
7 SYMBOL	SVN
6 SYMBOL	SIX
5 SYMBOL	FIV
4 SYMBOL	FOR
3 SYMBOL	THR
2 SYMBOL	TWO

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Figure 2: GAME NO. 401 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $31.00, $50.00, $100, or $300.

I. High-Tier Prize- A prize of $1,000, $3,100 or $31,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (401), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 401-0000001-000.

L. Pack - A pack of "THIRTY ONE" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of ticket 124.

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 "THIRTY ONE" Instant Game No. 401 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 "THIRTY ONE" Instant Game is determined once the latex on the ticket is scratched off to expose 36 (thirty-six) play symbols. Within each individual game, if the player reveals three play symbols either diagonally, vertically, or horizontally which when added up is equal to "31", the player will win the prize indicated by the arrow. Play symbols J, Q, and K will equal 10. Play symbol A will equal 11. All other play symbol cards will equal the numeric face value of that play symbol card. 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 36 (thirty-six) 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 36 (thirty-six) 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 36 (thirty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 36 (thirty-six) 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 "spot for spot" play data.

B. No duplicate games on a ticket spot for spot.

C. In any given row, column or diagonal in a game there will never be a total greater than 31.

D. There will be no occurrence of three (3) like cards in a row, column or diagonal.

E. There will only be one win per game.

2.3 Procedure for Claiming Prizes.

A. To claim a " THIRTY ONE " Instant Game prize of $3.00, $5.00, $10.00, $12.00, $20.00, $31.00, $50.00, $100, or $300, 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, make payment of the amount due the

claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $31.00, $50.00, $100, or $300 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 "THIRTY ONE" Instant Game prize of $1,000, $3,100, or $31,000, 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 "THIRTY ONE" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "THIRTY ONE" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, 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 therefore, 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 therefore, 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 therefore. 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. 401. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 401 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	480,000	12.50
$5	432,000	13.89
$10	96,000	62.50
$12	48,000	125.00
$20	120,000	50.00
$31	48,000	125.00
$50	24,000	250.00
$100	3,000	2,000.00
$300	2,700	2,222.22
$1,000	40	150,000.00
$3,100	42	142,857.14
$31,000	6	1,000,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 401 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. 401, 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-200308560
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 12, 2003

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Instant Game Number 422 "Midas Touch"

1.0 Name and Style of Game.

A. The name of Instant Game No. 422 is "MIDAS TOUCH". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 422 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 422.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, $1.00, $2.00, $4.00, $10.00, $20.00, $50.00, $200, $1,000, $25,000, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, POT OF GOLD SYMBOL, STACK OF COINS SYMBOL, and CROWN SYMBOL.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 422 - 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
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200.00	TWO HUND
$1,000	ONE THOU
$25,000	25 THOU
GOLD BAR SYMBOL	GOLD
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
POT OF GOLD SYMBOL	POTGLD
STACK OF COINS SYMBOL	COINS
CROWN SYMBOL	CROWN

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 422 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
EGT	$8.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $8.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize- A prize of $1,000, or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (422), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 422-0000001-000.

L. Pack - A pack of "MIDAS TOUCH" Instant Game tickets contains 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page and tickets 002 and 003 will be on the next page, and so forth, and tickets 248 and 249 will be on the last page. Please note the books will be in A- B 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 "MIDAS TOUCH" Instant Game No. 422 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 "MIDAS TOUCH" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches the play symbol, YOUR NUMBERS, to the designated key play symbol, WINNING NUMBERS, the player will win the corresponding prize. If the player reveals a designated play symbol, gold bar, in the BONUS BOX the player will win all eight (8) prizes indicated automatically. 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 19 (nineteen) 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, 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 19 (nineteen) 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 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 19 (nineteen) 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. No duplicate non-winning Your Number play symbols on a ticket.

B. No duplicate non-winning prize symbols on a ticket.

C. Consecutive non-winning tickets will not have identical play data, spot for spot.

D. No duplicate Winning Number play symbols on a ticket.

E. No Your Number play symbol will match either Winning Number play symbol when the "gold bar" symbol appears.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "MIDAS TOUCH" Instant Game prize of $2.00, $4.00, $5.00, $8.00 $10.00, $12.00, $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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, 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 2.3.C of these Game Procedures.

B. To claim a "MIDAS TOUCH" Instant Game prize of $1,000 or $25,000 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 "MIDAS TOUCH" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "MIDAS TOUCH" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, 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 therefore, 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 therefore, 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 therefore. 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 10,080,000 tickets in the Instant Game No. 422. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 422 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	1,128,960	8.93
$4	564,480	17.86
$5	161,280	62.50
$8	40,320	250.00
$10	80,640	125.00
$12	40,320	250.00
$20	40,320	250.00
$50	40,320	250.00
$200	14,616	689.66
$1,000	168	60,000.00
$25,000	10	1,008,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.77. 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.

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. 422 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. 422, 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-200308562
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 12, 2003

♦ ♦ ♦

Instant Game Number 426 "$500,000 Payday"

1.0 Name and Style of Game.

A. The name of Instant Game No. 426 is "$500,000 PAYDAY". The play style in Game 1 is "yours beats theirs". The play style in Game 2 is "key symbol match". The play style in Game 3 is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 426 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 426.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible 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, $1.00, $2.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $10,000, $500,000, POT OF GOLD SYMBOL, COIN SYMBOL, DIAMOND SYMBOL, MONEY BAG SYMBOL, TOP HAT SYMBOL, BAR OF GOLD SYMBOL, STACK OF CHIPS SYMBOL, MONEY SIGN SYMBOL, and WHEEL SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each 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. 426 - 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	THTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$500,000	500 THOU
POT OF GOLD SYMBOL	GOLD
COIN SYMBOL	COIN
DIAMOND SYMBOL	DIAMD
MONEY BAG SYMBOL	MBAG
TOP HAT SYMBOL	TPHAT
GOLD BAR SYMBOL	BAR
STACK OF BILLS SYMBOL	BILLS
STACK OF CHIPS SYMBOL	CHIPS
DOLLAR SIGN SYMBOL	MONEY
WHEEL SYMBOL	WHEEL

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 426 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000, $10,000, or $500,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (426), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 426-0000001-000.

L. Pack - A pack of "$500,000 PAYDAY" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

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 "$500,000 PAYDAY" Instant Game No. 426 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 "$500,000 PAYDAY" Instant Game is determined once the latex on the ticket is scratched off to expose 58 (fifty-eight) play symbols. In Game 1, if the player's key number play symbol designated as YOUR SCORE is greater than the key number play symbol designated as THEIR SCORE, the player will win the prize indicated. In Game 2, if the player reveals a key play symbol, YOUR SYMBOLS, that matches the designated key play symbol, LUCKY SYMBOL, the player will win the prize indicated for that key play symbol. In Game 3, if the player reveals a key number play symbols, YOUR NUMBERS, that matches either designated key number play symbol, CASH NUMBER, the player will win the prize indicated for that key number play 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 58 (fifty-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 58 (fifty-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 58 (fifty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 58 (fifty-eight) Play Symbols on the 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. All prize symbols may appear randomly throughout the locations on non-winning locations.

C. Game 1: No duplicate non-winning games.

D. Game 1: No ties between Yours and Theirs in a game.

E. Game 1: No duplicate non-winning prize symbols.

F. Game 2: Non-winning prize symbols will never be the same as the winning prize symbol.

G. Game 2: No duplicate non-winning Your Symbols for this game.

H. Game 3: No duplicate Cash Numbers play symbols.

I. Game 3: Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. Game 3. No duplicate non-winning Your Numbers for this game.

K. Game 3: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "$500,000 PAYDAY" Instant Game prize of $10.00, $20.00, $50.00, $100, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, 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 "$500,000 PAYDAY" Instant Game prize of $1,000, $10,000, or $500,000 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 "$500,000 PAYDAY" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "$500,000 PAYDAY" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game as set forth in Tex. Government Code Sec. 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, 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 therefore, 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 therefore, 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 therefore. 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 3,000,000 tickets in the Instant Game No. 426. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 426 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	640,000	4.69
$20.00	140,000	21.43
$50.00	40,000	75.00
$100	40,000	75.00
$500	8,000	375.00
$1,000	43	69,767.44
$10,000	18	166,666.67
$500,000	3	1,000,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 426 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. 426, 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.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 11, 2003

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Instant Game Number 433 "Weekly Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 433 is "WEEKLY GRAND". The play style for Game 1 is "your beats theirs". The play style of Game 2 is "match up". The play style of Game 3 is "match up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 433 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 433.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $4.00, $5.00, $10.00, $40.00, $100, $300, MONEY BAG SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, TOP HAT SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, and GRAND SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one

of these Play Symbol Captions appear under the appropriate Play Symbol and each 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. 433 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
GRAND	WEEK
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$40.00	FORTY
$100	ONE HUND
$300	THR HUND
CLOVER	CLVR
DIAMOND	DIAMD
GOLD BAR	GOLD
POT OF GOLD	POTGLD
MONEY BAG	MBAG
TOP HAT	TPHAT

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 433 - 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 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

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 $40.00, or $300.

I. High-Tier Prize - A prize of $1,000 or $1,000 per week for $20 years.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (433), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 433-0000001-000.

L. Pack - A pack of "WEEKLY GRAND" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page; tickets 002 and 003 will be on the next page, and so forth, and tickets 248-249 on the last page. Please note the books will be in an A-B 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 "WEEKLY GRAND" Instant Game No. 433 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 of the "WEEKLY GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 15 (fifteen) play symbols. In Game 1, if the player reveals a play symbol designated as YOUR NUMBER that is greater than the play symbol designated as THEIR NUMBER, in any one row horizontally across, the player will win the prize indicated for that row. If the player reveals the GRAND symbol, as part of the wining combination of the game, the player will win $1,000 per week for 20 years. In Game 2, if the player matches 3 identical play symbol amounts, the player will win the prize indicated. If the player gets 3 identical GRAND play symbols, the player will win $1,000 per week for 20 years. In Game 3, if the player reveals 2 identical play symbols out of 3 symbols, the player will win $20 instantly. 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 15 (fifteen) 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 15 (fifteen) 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 15 (fifteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 15 (fifteen) 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 three or more like non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. The GRAND symbol may only be used in Games 1 and 2.

E. Game 1: No ties between Yours and Theirs in a row.

F. Game 1: No duplicate games on a ticket.

G. Game 1: No duplicate non-winning prize symbols on a ticket.

H. Game 2: No 4 or more of a kind.

2.3 Procedure for Claiming Prizes.

A. To claim a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $300 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 2.3.C of these Game Procedures.

B. When claiming a "WEEKLY GRAND" Instant Game prize of GRAND, the claimant must choose one of four (4) payment options for receiving their prize:

1. Weekly via wire transfer to the claimant/winner's account. This will be similar to the current "WEEKLY GRAND" (Game 173) payment process. With this plan, a payment of $1,000.00 less Federal withholding will be made once a week for twenty years. After the initial payment, installment payments will be made every Wednesday.

2. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the month, the claimant/winner will still receive the entire month's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $4,337.00 less Federal withholding will be made the month of the claim. Each additional month, a payment of $4,333.00 less Federal withholding will be made once a month for 20 years. After the initial payment, installment payments will be made on the first business day of each month.

3. Monthly via wire transfer to the claimant/winner's account. If the claim is made during the quarter, the claimant/winner will still receive the entire quarter's payment. This will allow the flow of payments throughout the 20 years to remain the same. With this plan, a payment of $13,000.00 less Federal withholding will be made each quarter (four times a year) for 20 years. After the initial payment, installment payments will be made on the first business day of the first month of every quarter (January, April, July, October).

4. Annually via wire transfer to the claimant/winner's account. These payments will be made in a manner similar to how jackpot payments are currently handled. With this plan, a payment of $52,000.00 less Federal withholding will be made once a year during the anniversary month of the claim for 20 years. After the initial payment, installment payments will be made on the first business day of the anniversary month.

C. As an alternative method of claiming a "WEEKLY GRAND" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $300, 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "WEEKLY GRAND" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game as set out 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, 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 therefore, 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 therefore, 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 therefore. 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 25,200,000 tickets in the Instant Game No. 433. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 433 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	2,620,800	9.62
$4	2,066,400	12.20
$5	100,800	250.00
$10	352,800	71.43
$20	226,800	111.11
$40	151,200	166.67
$300	8,295	3,037.97
$1,000/WK	3	8,400,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.56. 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.

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. 433 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. 433, 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.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Instant Game Number 718 "Roll for Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 718 is "ROLL FOR RICHES". The play style is "add up with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 718 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 718.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, $1.00, $2.00, $4.00, $6.00, $10.00, $12.00, $20.00, $30.00, $50.00, $100, $250, $5,000, and $25,000.

D. Play Symbol Caption- the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appear under the appropriate Play Symbol and each 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. 718 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
$1.00	ONE$
$2.00	TWO
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$12.00	TWELVE
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$5,000	FIV THOU
$25,000	25 THOU

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 718 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
SIX	$6.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 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 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $250.

I. High-Tier Prize- A prize of $5,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (718), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 718-0000001-000.

L. Pack - A pack of "ROLL FOR RICHES" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fan-folded in pages of two (2). Tickets 000 and 001 will be on the top page; tickets 002 and 003 will be on the next page, etc., and tickets 248 and

249 will be on the last page. Please note the books will be in an A-B 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 "ROLL FOR RICHES" Instant Game No. 718 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 "ROLL FOR RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) play symbols. The player will add up all the play symbol dice in each individual roll. If the total of the play symbol dice is added up in each individual roll and equals the required amount of seven (7), the player will win the prize indicated for that individual roll. If the total of the play symbol dice is added up in each individual roll and equals the required amount of 11 (eleven), the player will win double the prize indicated for that individual roll. 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 24 (twenty-four) 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 24 (twenty-four) 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 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 24 (twenty-four) 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 rolls on a ticket (in any order).

C. No duplicate non-winning prize symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "ROLL FOR RICHES" Instant Game prize of $2.00, $4.00, $6.00, $10.00, $12.00, $20.00, $30.00, $50.00, $100, or $250, 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100, or $250 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 "ROLL FOR RICHES" Instant Game prize of $5,000 or $25,000, 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 "ROLL FOR RICHES" 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; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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.E 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 "ROLL FOR RICHES" 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game 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.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, 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 therefore, 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 therefore, 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 therefore. 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. 718. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 718 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	544,320	9.26
$4	262,080	19.23
$6	141,120	35.71
$10	80,640	62.50
$12	40,320	125.00
$20	20,160	250.00
$30	15,120	333.33
$50	9,240	545.45
$100	3,780	1,333.33
$250	1,596	3,157.89
$5,000	10	504,000.00
$25,000	5	1,008,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.51. 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.

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. 718 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. 718, 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-200308563
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 12, 2003

♦ ♦ ♦

Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, February 4, 2004, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and EKMF, Inc. dba Pleasant Homes to hear alleged violations of Sections 6(m) (currently found at Section 1201.151 of the Occupations Code), 6(m)(1) (currently found at Section 1201.151(a) of the Occupations Code), and 6(m)(3) (currently found at Section 1201.151(b) of the Occupations Code), of the Occupations Code) of the Act by refusing to refund a deposit given by consumer within fifteen days after receiving written notice requesting the refund. SOAH 332-04-1634. Department MHD2003001326-RD.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200308615
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: December 17, 2003

♦ ♦ ♦

Texas Board of Pardons and Paroles

Correction of Error

The Texas Board of Pardons and Paroles proposed amendments to 37 TAC §145.13, concerning parole decisions. The amendments were published in the December 5, 2003, *Texas Register* (28 TexReg 10895).

The Board's submission contained a typographical error. The word "date" should not have been shown with strikeout marks for deletion.

In subsection (c)(2) the paragraph was published as follows:

(2) vote CU/FI (Mon/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender had been sentence to serve a single sentence. This date shall be within a three-year incarceration period following [~~either the prior parole docket date or date of~~] the panel decision; [~~if the prior parole docket date has passed.~~]

The paragraph should read as follows:

(2) vote CU/FI (Mon/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender had been sentence to serve a single sentence. This date shall be within a three-year incarceration period following [~~either the prior parole docket date or date of~~] the panel decison [~~if the prior parole docket~~] date; [~~has passed.~~]

TRD-200308603

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Public Utility Commission of Texas

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 December 9, 2003, for retail electric provider (REP) certification, pursuant to §§39.101-39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Accent Energy Texas LLC for Retail Electric Provider (REP) Certification, Docket Number 29031 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 January 2, 2004. 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 29031.

TRD-200308549
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on November 20, 2003, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Kent and Garza Counties, Texas.

Docket Style and Number: Application of Cap Rock Telephone Cooperative, Inc. for an Amendment to Certificate of Convenience and Necessity within Kent and Garza Counties. Docket Number 28931.

The Application: The proposed amendment would realign the boundaries between Cap Rock and Southwestern Bell Telephone, L.P. doing business as SBC Texas to allow Cap Rock to provide local exchange services to all customers in the Rio Brazos Estates subdivision.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by January 9, 2004, 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28931.

TRD-200308551
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Notice of Application for Certificate of Convenience and Necessity in Hidalgo County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 10, 2003, for a certificate of convenience and necessity in Hidalgo County, Texas.

Docket Style and Number: Application of Magic Valley Electric Cooperative, Inc. (MVEC) for a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Hidalgo County, Texas. Docket Number 28895.

The Application: MVEC proposes to build a 138-kV transmission tie line from the MVEC Alton Substation on the southwest corner of Mile 4 North west of Stewart Road to the American Electric Power Texas Company (AEPTC) Frontera to McAllen 138-kV transmission line located about 300 feet north of the center of Mile 3 North and construct a 138-kV tie line and placement of the switching station. The proposed tie line will tap the AEPTC Palmhurst to McAllen 138- kV line and provide a connection to the MVEC 138-kV system at the MVEC Alton Distribution Substation.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by January 26, 2004, 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28895.

TRD-200308550
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Notice of Application for Certificate of Convenience and Necessity in Kaufman County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 10, 2003, for a certificate of convenience and necessity in Kaufman County, Texas.

Docket Style and Number: Application of Farmers Electric Cooperative, Inc. doing business as FEC Electric for a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Kaufman County, Texas. Docket Number 28936.

The Application: Farmers Electric Cooperative, Inc. doing business as FEC Electric (FEC Electric) proposes to design and construct a single-circuit (future double-circuit) 138-kV transmission line from the proposed Windmill Farms Substation, located west of the intersection of Reeder Road and Townsend Road, through a second proposed substation, to an existing Oncor 138-kV transmission line. The project is designated as the Forney-NW Terrell 138-kV transmission line and is located entirely within Kaufman County, Texas.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by January 26, 2004, 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28936.

TRD-200308552
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 11, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Volo Communications of Texas, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 29043 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, SDSL, long distance, and conference calling.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas and Verizon.

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 December 31, 2003. 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 29043.

TRD-200308592
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2003

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of Verizon's application filed with the Public Utility Commission of Texas (commission) on November 13, 2003, to withdraw services.

Docket Title and Number: Application of Verizon Southwest to Revise Tariff to Remove Reservation Based Conference Connections Service from its Texas Long Distance Message Telecommunications Service Tariff, Docket Number 28881.

The Application: On November 13, 2003, GTE Southwest, Incorporated doing business as Verizon Southwest (Verizon) filed an application to withdraw Reservation Based Conference Connections Service from its Texas Long Distance Message Telecommunications Service Tariff. Verizon stated the reason for withdrawal is that the service equipment vendor will no longer support equipment maintenance (including parts and labor) after January 1, 2004. According to Verizon, AT&T, MCI, Global Crossing, Citizens, and Sprint offer similar services. Verizon requested a waiver of the customer notice requirements, stating that the service is provided on a "per request/use" basis and as such has no subscribers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by January 9, 2004, 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 1-800-735-2989. All correspondence should refer to Docket Number 28881.

TRD-200308548
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Starlight Phone, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29036. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29036. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 13, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule

§22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29036.

TRD-200308553
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and IQC, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29037. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29037. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 13, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29037.

TRD-200308554
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and IQC, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29038. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29038. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 13, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29038.

TRD-200308555
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and American Fiber Network, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29040. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29040. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 13, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29040.

TRD-200308556
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 10, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Habla Communicaciones, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29041. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29041. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 13, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29041.

TRD-200308557
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 9, 2003, Southwestern Bell Telephone, LP d/b/a SBC Texas and Level 3 Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29033. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29033. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 12, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 29033.

TRD-200308513
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 15, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Vartec Telecom, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29057. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29057. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 16, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29057.

TRD-200308605
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 15, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Signatel Telephone Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29058. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29058. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 16, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29058.

TRD-200308606
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2003

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On December 15, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Excel Telecommunications, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29059. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29059. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 16, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29059.

TRD-200308607
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2003

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Public Notice of Amendment to Interconnection Agreement

On December 15, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Lightyear Communications, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29060. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29060. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 16, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29060.

TRD-200308608
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2003

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing, on December 9, 2003, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on December 19, 2003.

Docket Title and Number. CenturyTel of San Marcos, Inc. Application for Approval of LRIC Study for Simple Choice Essentials Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 29027.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29027. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200308509
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2003

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing, on December 9, 2003, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on December 19, 2003.

Docket Title and Number. CenturyTel of Lake Dallas, Inc. Application for Approval of LRIC Study for Simple Choice Essentials Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 29028.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29028. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200308510
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2003

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing, on December 9, 2003, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on December 19, 2003.

Docket Title and Number. CenturyTel of Port Aransas, Inc. Application for Approval of LRIC Study for Simple Choice Essentials Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 29029.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29029. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200308511
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2003

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing, on December 9, 2003, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) studies pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC studies on or before December 19, 2003.

Docket Title and Number. Southwestern Bell Telephone, LP d/b/a SBC Texas's Application for Approval of LRIC Studies for Extended Area Calling Service (EACS) and Extended Metropolitan Service (EMS) Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 29034.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 29034. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200308512
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2003

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Public Notice of Interconnection Agreement

On December 12, 2003, Valor Telecommunications of Texas, LP, doing business as Valor Telecom, and NTS Communications, Incorporated, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29052. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29052. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 15, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29052.

TRD-200308593
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2003

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Public Notice of Interconnection Agreement

On December 15, 2003, Blossom Telephone Company, and San Antonio MTA, LP doing business as Verizon Wireless, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 29054. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 29054. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 16, 2004, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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 telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 29054.

TRD-200308604
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 16, 2003

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Public Notice of Workshop on Tasks to be Performed by Independent Third Party for PURA §39.262 True-Up Proceedings

The Public Utility Commission of Texas (commission) will hold on Tuesday, January 6, 2004, a workshop on the tasks to be performed by the Independent Third Party defined in commission Substantive Rule §25.263. These tasks will be for the purpose of determining market prices and any other market information necessary for the calculation, pursuant to Public Utility Regulatory Act §39.262(e), of the "retail clawback" component of the true-up proceedings authorized by PURA §39.262. At the workshop, the commission will receive comments and opinions from interested parties on issues concerning the nature, scope, and confidentiality of market information to be compiled and considered by the Independent Third Party. The workshop will be held from 9:00 a.m. to 12:00 p.m. in the Commissioners' Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This workshop is being conducted under Project Number 28100, *Request for Information to Locate Firms Interested in Analyzing Market Data for True-up Proceedings Pursuant to PURA §39.262(e).*

Questions concerning the workshop or this notice should be referred to Darryl Tietjen, Director of Financial Analysis, Financial Review Division, at 512-936-7436 or darryl.tietjen@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200308594

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2003

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Railroad Commission of Texas

Request for Comments on Certain Oil and Gas Division Forms

The Railroad Commission of Texas requests comments on certain Oil and Gas Division forms as part of the proposed amendments to 16 TAC §3.80, relating to Commission Forms, Applications and Filing Requirements, published in this issue of the *Texas Register*. The proposed amendments to §3.80 add language concerning electronic filings with the Commission, require rulemaking for adoption or revision of forms, and incorporate a list of current forms and their creation or last revision dates.

The Commission is requesting comments on both the proposed amendments to §3.80 and these proposed forms. The Commission is currently in the process of contracting with a third party to help with form design so that these forms can be scanned; therefore, the specific format design of the forms proposed may change slightly, but the overall format and required information will not change substantially.

The forms included in this project are: (1) Form H-1, Application to Inject Fluid into a Reservoir Productive of Oil or Gas; (2) Instructions for Form H-1; (3) Form H-1A, Injection Well Data; (4) Form H-1A Instructions; (5) Form W-14, Application to Dispose of Oil and Gas Waste by Injection into a Formation Not Productive of Oil and Gas; (6) Form W-14 Instructions; (7) Form W-1, Application for Permit to Drill, Recomplete or Re-Enter; (8) Form W-1 Instructions; (9) Form W- 1D, Directional Well Information; (10) Form W-1H, Horizontal Well Information; (11) Form PR, Monthly Production Report; (12) Form PR Instructions.

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

Form H-1
Draft 12-02-03

APPLICATION TO INJECT FLUID INTO A RESERVOIR PRODUCTIVE OF OIL OR GAS

1.Operator name _____ 2. Operator P-5 No. _____
(as shown on P-5, Organization Report)

3.Operator Address _____

4. County _____ 5. RRC District No. _____

6. Project Field Name _____ 7. Field No. _____

8. Project Lease Name _____ 9. Lease/Gas ID No. _____

10. Check the Appropriate Boxes: New Project ☐ Amendment ☐

If amendment, Fluid Injection Project No. F-_____

Reason for Amendment: Add wells ☐ Types of fluids _____

Pressure ☐ Volume ☐ Interval ☐ Other (explain) _____

RESERVOIR DATA FOR A NEW PROJECT

11. Name of Formation _____ 12. Composition _____
(e.g., dolomite, limestone, sand, etc.)

13. Type of Trap _____ 14. Type of Drive during Primary Production _____
(anticline, fault trap, stratigraphic trap, etc.)

15. Average Pay Thickness _____ 16. Acreage _____ 17. Current Bottom Hole Pressure (psig) _____

18. Average Horizontal Permeability (mds) _____ 19. Average Porosity (%) _____

INJECTION PROJECT DATA

20. No. of Injection Wells in this application _____ 21. Injection Pattern and Spacing _____

22. Type of Injection Project: Waterflood ☐ Pressure Maintenance ☐ Miscible Displacement ☐ Natural Gas Storage ☐

Steam ☐ Thermal Recovery ☐ Disposal ☐ Other _____

23. If disposal, are fluids from leases other than the lease identified in Item 9? Yes ☐ No ☐

24. Is this application for a Commercial Disposal Well ? Yes ☐ No ☐

25. If for commercial disposal, will non-hazardous oil and gas waste other than produced water be disposed? Yes ☐ No ☐

26. Type(s) of Injection Fluid:

Salt Water ☐ Brackish Water ☐ Fresh Water ☐ CO_2 ☐ N_2 ☐ Air ☐ H_2S ☐ LPG ☐ NORM ☐

Natural Gas ☐ Polymer ☐ Other (explain) _____

27. If injection fluids include fluids other than produced salt water, identify the source of each type of injection water by formation, or by aquifer and depths, or by name of surface water source: _____

CERTIFICATE

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete, to the best of my knowledge.

_____
Signature Date

_____
Name of Person (type or print)

_____
Phone _____ Fax _____

For Office Use Only	*Register No.*	*Amount $*

See Reverse Side for Required Attachments

INSTRUCTIONS FOR FORM H-1

1. File the original Form H-1 application, including all attachments, with Assistant Director, Environmental Services, Railroad Commission of Texas, P. O. Box 12967, Capitol Station, Austin, Texas 78711. File one copy of the application and all attachments with the appropriate Railroad Commission District Office. Include with the original application a non-refundable fee of $200, payable to the Railroad Commission of Texas. Submit an additional $150 for each request for an exception to Statewide Rule 46.

2. Well Logs. Attach the complete electric log or a similar well log for one of the proposed injection wells. Attach any other logging and testing data, such as a cement bond log, available for the well.

3. (a) For a new project, attach a map with surveys marked showing the location and depth of all wells of public record within one-quarter (1/4) mile radius of the project area.
(b) For an expansion of a previous authority, attach a map with surveys marked showing the location and depth of all wells of public record within one-quarter (1/4) mile radius of the additional wells, unless such data has been submitted previously for the project.
(c) Table of Wells. For those wells in 3(a) or 3(b) that penetrate the top of the injection interval, attach a table of wells showing the dates drilled and their current status. The Commission may adjust or waive this data requirement in accordance with provisions in the "Area of Review" section of Statewide Rule 46.

4. Water Letter. Attach a letter from the Texas Commission on Environmental Quality (TCEQ) or its predecessor or successor agencies for a well within the project area stating the depth to which usable quality water occurs.

5. Form(s) H-1A. Attach Form H-1A showing each injection well to be used in the project. Up to TWO wells can be listed on each Form H-1A.

6. Use of Fresh Water. Attach Form H-7, Fresh Water Data Form, for a new injection project that includes the use of fresh water. An updated Form H-7 must be attached to Form H-1 for an expansion of a previously authorized fresh water injection project unless the fresh water is purchased from a commercial supplier, public entity, or from another operator.

7. Plat of Leases, Notice and Hearings
(a) Attach a plat of leases showing producing wells, injection wells, offset wells and identifying ownership of all surrounding leases.

(b)(1) Send a copy of the application to the surface owner, the offset operators, and to the clerk of the city and county in which the well is located. If this is the initial application for fluid injection authority for this reservoir, send copies of the application to all operators in the reservoir. Attach a signed statement indicating the date the copies of the application were mailed or delivered and the names and addresses of the persons to whom copies were sent.

(2) Attach an affidavit of publication signed by the publisher that notice of the application has been published in a newspaper of general circulation in the county where the well(s) will be located. Notice instructions and forms may be obtained from the Commission's Austin Office, the Commission's website (www.rrc.state.tx.us) or the District Offices. Attach a newspaper clipping of the published notice.

(c) An affected person or local government may protest this application. A hearing on the application will be held if a protest is received and the applicant requests a hearing, or if the Commission determines that a hearing is in the public interest. Any such request for a public hearing shall be in writing and contain: (1) the name, mailing address and phone number of the person making the request; and (2) a brief description of how the protestant would be adversely affected by the granting of the application. If the Commission determines that a valid protest has been received, or that a hearing would be in the public interest, a hearing will be held after issuance of proper and timely notice of the hearing by the Commission. If no protest is received within fifteen (15) days of publication or receipt in Austin of the application, the application may be processed administratively.

12-02-03 Draft

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

Form H-1A

INJECTION WELL DATA (attach to Form H-1)

1. Operator Name (as shown on P-5)				2. Operator P-5 No.	
3. Field Name				4. Field No.	
5. Current Lease Name				6. Lease/Gas ID No.	
7. Lease is _____ miles in a _____ direction from _____ (center of nearest town).					
8. Well No.	9. API No.	10. UIC No.	11. Total Depth	12. Date Drilled	13. Base of Usable Quality Water (ft)

14. (a) Legal description of well location, including distance and direction from survey lines:

(b) Latitude and Longitude of well location, if known (optional) Lat. Long.

15. New Injection Well ☐ or Injection Well Amendment ☐ Reason for Amendment: Pressure ☐ Volume ☐ Interval ☐

Fluid Type ☐ Other (explain) _____

Casing	Size	Setting Depth	Hole Size	Casing Weight	Cement Class	# Sacks of Cement	Top of Cement	Top Determined by
16. Surface								
17. Intermediate								
18. Long string								
19. Liner								

20. Tubing size	21. Tubing depth	22. Injection tubing packer depth	23. Injection interval _____ to _____

24. Cement Squeeze Operations (list all)	Squeeze Interval (ft)	No. of Sacks	Top of Cement (ft)

25. Multiple Completion? Yes ☐ No ☐	26. Downhole Water Separation? Yes ☐ No ☐	*NOTE: If the answer is "Yes" to Item 25 or 26, provide a Wellbore Sketch*
27. Fluid Type	28. Maximum daily injection volume for each fluid type (rate in bpd or mcf/d)	29. Estimated average daily injection volume for each fluid type (rate in bpd or mcf/d)

30. Maximum Surface Injection Pressure: for Liquid psig for Gas psig.

8. Well No.	9. API No.	10. UIC No.	11. Total Depth	12. Date Drilled	13. Base of Usable Quality Water (ft)

14. (a) Legal description of well location, including distance and direction from survey lines:

(b) Latitude and Longitude of well location, if known (optional) Lat. Long.

15. New Injection Well ☐ or Injection well amendment ☐ Reason for Amendment: Pressure ☐ Volume ☐ Interval ☐

Fluid Type ☐ Other (explain) _____

Casing	Size	Setting Depth	Hole Size	Casing weight	Cement Class	# Sacks of Cement	Top of Cement	Top Determined by
16. Surface								
17. Intermediate								
18. Long string								
19. Liner								

20. Tubing size	21. Tubing depth	22. Injection tubing packer depth	23. Injection interval _____ to _____

24. Cement Squeeze Operations (list all)	Squeeze Interval (ft)	No. of Sacks	Top of Cement (ft)

25. Multiple Completion? Yes ☐ No ☐	26. Downhole Water Separation? Yes ☐ No ☐	*NOTE: If the answer is "Yes" to Item 25 or 26, provide a Wellbore Sketch*
27. Fluid Type	28. Maximum daily injection volume for each fluid type (rate in bpd or mcf/d)	29. Estimated average daily injection volume for each fluid type (rate in bpd or mcf/d)

30. Maximum Surface Injection Pressure: for Liquid psig for Gas psig.

FORM H-1A INSTRUCTIONS

1. File as an attachment to Form H-1 to provide injection well data for each application for a new injection well permit or to amend an injection well permit.

2. Complete the current field name and number (Items 3 and 4) with the current field designation in Commission records.

3. Complete the current lease name and number (Items 5 and 6) with the current lease identification in Commission records for each well in the application. Use separate H-1A Forms for each lease.

4. Provide the current well number(s) for existing wells in Item 8. Provide the proposed well numbers for wells that have not yet been drilled.

5. Check in Item 15 the appropriate box for a new injection well permit or an amendment to an injection well permit. If an amendment, check the appropriate boxes for the reason(s) for the application(s) for amendment. If "other" is checked, provide a brief explanation.

6. Provide complete well construction information (Items 16 through 26), including all proposed re-completion (e.g. liner, cement squeeze, tubing, packer).

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

Form W-14
Draft 12-02-03

APPLICATION TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A FORMATION NOT PRODUCTIVE OF OIL AND GAS

1 .Operator Name _____ 2. Operator P-5 No. _____

3. Operator Address: _____

4. County _____ 5. RRC District No. _____

6. Field Name _____ 7. Field Number _____

8. Lease Name _____ 9. Lease/Gas ID No. _____

10. Well is _____ miles in a _____ direction from _____ (center of nearest town). 11. No. acres in lease _____

12. Legal description of location including distance and direction from survey lines _____

13. Latitude/Longitude, if known (Optional) Lat. _____ Long. _____

14. New Permit: Yes ☐ No ☐ If no, amendment of Permit No. _____ UIC# _____

15. Reason for amendment: Pressure ☐ Volume ☐ Interval ☐ Commercial ☐ Other (explain) _____

16.Well No.	17.API No.		18.Date Drilled			19.Total Depth		20.Plug Date, if re-entry
Casing	Size	Setting Depths	Hole Size	Casing Weight	Cement Class	Cement Sacks (#)	Top of cement	Top Determined by
21. Surface								
22. Intermediate								
23. Long String								
24 .Liner								
25. Other								

26. Depth to base of Deepest Freshwater Zone _____ 27.Multiple completion? Yes ☐ No ☐

28. Multistage cement? Yes ☐ No ☐ If yes, DV Tool Depth: _____ft. No. Sacks: _____ Top of Cement: _____

29. Bridge Plug Depth: _____ ft. 30. Injection Tubing Size: _____ in. and Depth _____ ft. 31. Packer Depth: _____ft.

32. Cement Squeeze Operations (list all giving interval and number of sacks of cement and cement top): _____

_____ Proposed ☐ or Complete ☐

33. Injection Interval from _____ to _____ ft. 34. Name of Disposal Formation _____

35. Any Oil and Gas Productive Zone within two miles? Yes ☐ No ☐
If yes, Depth _____ ft. and Reservoir Name _____

36. Maximum Daily Injection Volume _____ bpd 37. Estimated Average Daily Injection Volume _____bpd

38. Maximum Surface Injection Pressure _____ psig 39. Estimated Average Surface Injection Pressure_____ psig

40. Source of Fluids (Formation, depths and types): _____

41. Are fluids from leases other than lease identified in Item 8? Yes ☐ No ☐ 42. Commercial Disposal Well? Yes ☐ No ☐

43. If commercial disposal, will non-hazardous oil and gas waste other than produced water be disposed of? Yes ☐ No ☐

44. Type(s) of Injection Fluid: Salt Water ☐ Brackish Water ☐ Fresh Water ☐ CO_2 ☐ N_2 ☐ Air ☐ H_2S ☐

LPG ☐ NORM ☐ Natural Gas ☐ Polymer ☐ Other (explain) _____

CERTIFICATE

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete, to the best of my knowledge.

_____
Signature Date

_____
Name of Person (type or print)

Phone _____ Fax _____

FOR OFFICE USE ONLY	*REGISTER NO.*	*AMOUNT $*

APPLICANT ALSO MUST COMPLY WITH THE INSTRUCTIONS ON THE REVERSE SIDE

FORM W-14 INSTRUCTIONS

1. File the original application, including all attachments, with the Assistant Director, Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. File one copy of the application and all attachments with the appropriate district office.
2. Include with the original application a non-refundable fee of $100 payable to the *Railroad Commission of Texas.* Submit $150 for each request for an exception to Statewide Rule 9.
3. Provide the current field name (Item 6) and field number (Item 7) designated in Commission records for an existing well. If the application is for a new well, provide the nearest producing field name and number.
4. Check in Item 14 the appropriate box for a new permit or an amendment of an existing permit. If an amendment, check the applicable boxes in Item 15 to indicate the reason for amendment and provide a brief explanation if "other" is checked.
5. If the application is for a new permit, attach a complete electrical log of the well or the log of a nearby well.
6. Attach a letter from the Texas Commission on Environmental Quality (TCEQ) stating that the well will not endanger usable quality water strata and that the formation or stratum to be used for disposal does not contain usable quality water. To obtain the TCEQ letter, submit two copies of the Form W-14, a plat with surveys marked, and a representative electrical log to TCEQ, MC 151, P.O. Box 13087, Austin, Texas 78711-3087. NOTE: If the application is for an amendment, a new TCEQ letter is required only if the amendment is for a change in the disposal interval.
7. Attach a map showing the location of all wells of public record within one-half (1/2) mile radius of the proposed disposal well. On the map show each Commission-designated operator of each well within one-half (1/2) mile of the proposed disposal well. NOTE: For a commercial disposal well application, the map shall also show the ownership of the proposed disposal well tract and the surface tracts that adjoin the proposed disposal well tract.
8. Attach a table of all wells of public record that penetrate the disposal interval and that are within one-quarter (1/4) mile radius of the proposed disposal well. The table shall include the well identification, date drilled, depth, current status, and the plugging dates of those wells that are plugged. Identify any wells that appear to be or that you may know are unplugged or improperly plugged and penetrate the proposed injection interval. Alternatively, an applicant may request a variance under Rule 9(7)(B). NOTE: If the application is for an amendment, a table of wells within a one-quarter (1/4) mile radius is required only if the current permit was issued before April 1, 1982, or if the amendment is for a shallower disposal depth.
9. Attach a list of the names and mailing or physical addresses of affected persons who were notified of the application and when the notification was mailed or delivered. Include a signed statement attesting to the notification of the listed affected persons. Notice shall be provided by sending or delivering a copy of the front and back of the application to the surface owner of record of the surface tract where the well is located, each Commission-designated operator of any well located within one-half (1/2) mile of the proposed well, the county clerk, and the city clerk, or other city official, if the proposed well is located within municipal boundaries. In addition, notice of a commercial disposal well also shall be provided to surface owners of record of each surface tract that adjoins the surface tract where the proposed well will be located. NOTE: If the application is for an amendment, notification of the county clerk and the city clerk are required only if the amendment is for disposal interval or for commercial status.
10. Attach an affidavit of publication signed by the publisher that the notice of publication has been published in a newspaper of general circulation in the county where the disposal well will be located. Attach a newspaper clipping of the published notice. If the application is for a commercial disposal well, that fact must be stated in the published notice. NOTE: If the application is for an amendment, notification by publication is required only if the amendment is for disposal interval or for commercial status.
11. Attach any other technical information that you believe will facilitate the review of the application. Such information may include a cement bond log, a cementing record, or a well bore sketch.

Additional information is available in the *Underground Injection Control Manual*, which is available on the Railroad Commission's website: www.rrc.state.tx.us

No public hearing will be held on this application unless an affected person or local government protests the application, or the Commission administratively denies the application. Any protest shall be in writing and contain (1) the name, mailing address, and phone number of the person making the protest; and (2) a brief description of how the protestant would be adversely affected by the activity sought to be permitted. If the Commission or its delegate determines that a valid protest has been received, or that a public hearing is in the public interest, a hearing will be held upon written request by the applicant. The permit may be administratively issued in a minimum of 15 days after receipt of the application, published notice, or notification of affected persons, whichever is later, if no protest is received.

(Enter if Assigned:)
API Number: 42-_____
Permit Number:_____
Rule 37/38 Case No:_____

Railroad Commission of Texas
Oil and Gas Division
Application for Permit to Drill, Recomplete or Re-Enter

FORM W-1 Draft 12-02-03

Drilling Permit Fee Based on Depth:
0'-2000'-$200 2001'-4000'-$225 4001'-9000'-$250
≥9000'-$300 Add $150 for Expedited Service
Add $200 for Rule 37/38 Exception

1. RRC Operator No:	2. Operator Name (as shown on P-5 Organization Report)	3. Address (Including city, state, zip)
4. Lease Name:	5. Well Number:	

General Information

6. Purpose of Filing (mark appropriate boxes): ☐ New Drill ☐ Recompletion ☐ Reclass ☐ Field Transfer ☐ Re-enter ☐ Amended ☐ Amended as Drilled (BHL)
7. Wellbore Profile (mark appropriate boxes): ☐ Vertical ☐ Horizontal ☐ Directional ☐ Sidetrack

8. Total Vertical Depth:	9. Do you have the right to develop minerals under any right of way? ☐ Yes ☐ No	10. Is this wellbore subject to Statewide Rule 36 (hydrogen sulfide area)? ☐ Yes ☐ No

Surface Location Information

11. RRC District:	12. County:	13. Surface Location Code:	14. This well is to be located _____miles in a _____direction from _____ which is the nearest town in the county of the well site.

15. Section:	16. Block:	17. Survey:	18. Abstract No:	19. Distance to nearest lease line:	20. Number of contiguous acres in lease, pooled unit or unitized track:

21. Lease Perpendiculars: _____ ft. from the _____ line and _____ ft. from the _____ line.
22. Survey Perpendicular: _____ ft. from the _____ line and _____ ft. from the _____ line.

23. Is this a pooled unit? ☐ Yes (attach P-12 and certified plat) ☐ No	24. Unitization No.:	25. Are you applying for substandard acreage field? ☐ Yes (attach W-1A) ☐ No

Field Information (list all fields of anticipated completion including Wildcat. List one zone per line. Attach additional W-1 if more space is needed)

26. District	27. Field Name (Exactly as shown on RRC proration schedule)	28. Field Number	29. Well Type	30. Completion Depth	31. Nearest Well	32. No. Wells on this Lease in this Reservoir

Bottom Hole Location Information (complete for directional and horizontal wells, and amended applications for unintentionally deviated wells)

33. Lease Perpendiculars: _____ ft. from the _____ line and _____ ft. from the _____ line.
34. Survey Perpendiculars: _____ ft. from the _____ line and _____ ft from the _____ line.

35. Penetration Point (Complete for Horizontal Wells only): _____ ft. from the _____ line and _____ ft from the _____ line.

Remarks:

DRAFT

RRC Use Only

CERTIFICATE

I declare under penalties in Sec. 91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete to the best of my knowledge.

Signature **Name of Representative (print)**

Telephone (area code and number) **Date (month, day, year)**

E-mail Address (optional) Note: If e-mail address is provided, it will be part of this public record

FORM W-1 INSTRUCTIONS REFERENCE: Statewide Rules 5, 36, 37, 38, 39, and 40

Draft 12-02-03

A. COMPLIANCE. In order to file a Form W-1 (Drilling Permit Application) you must have a current P-5 Organization Report and financial assurance on file with the Commission and be in compliance with all RRC rules and orders. DO NOT BEGIN DRILLING OPERATIONS UNTIL YOU HAVE RECEIVED AUTHORIZATION FROM THE COMMISSION. Before the Commission will assign an allowable to a well, the operator must set and cement sufficient surface casing to protect all usable-quality water strata, as defined by the Texas Commission on Environmental Quality, or its predecessor or successor agencies.

B. WHERE AND WHAT TO FILE. File with the Commission in Austin the original Form W-1 application package, which consists of the completed Form W-1, fee payment, plat, and other documents as required. For fees, make check or money order payable to Railroad Commission of Texas. For information on use of credit cards or pre-paid accounts, contact the Commission. The rule exception fee covers one or more exceptions; if other than a "new drill," give the original exception case or docket number. Fees are non-refundable. The RRC may waive fees if an amended permit is filed because of RRC action.

C. In the box at the top left-hand corner of the Form W-1, enter, if assigned or as applicable, the API number, permit number, and Rule 37/38 case number.

D. PURPOSE OF FILING (Item 6.). *Recompletion* is working over an existing wellbore to complete in a different field/reservoir. Re-entry is going back into a wellbore that has been plugged to the surface. *Reclassification* is for an existing well originally permitted only as injection/disposal or other service well that is changing to an oil or gas producing well or an existing well changing from oil to gas or gas to oil production in the Panhandle East or West fields. For anything other than a "new drill," indicate the API number (Item 4). If the API number is not known, in "Operator Remarks" area, give the original operator, lease, and well identification and date of original completion or plugging. A materially amended permit requires a new Form W-1 and applicable fees; it is usually required for an additional field/reservoir or a change in location on a previously permitted but not yet completed well. Include the original drilling permit number when filing an application for an amended permit.

E. WELLBORE PROFILE (Item 7.) Check "sidetrack" only for recompletions or re-entries. File **FORM W-1D, DIRECTIONAL WELL INFORMATION**, if the proposed well configuration will be directional. File **FORM W-1H, HORIZONTAL WELL INFORMATION**, if the proposed well configuration will be horizontal. For these types of completions, several different sets of location data are required. This data may or may not be the same for each field applied for. However, each different proposed bottomhole location or lateral must be associated with at least one field. These forms allow you to assign a REFERENCE NAME to each bottomhole or lateral in order to aid in the identification and association with the fields.

F. LOCATION SPACING AND DENSITY. The proposed location must be "regular" in terms of the RRC's spacing (Rule 37 or field rules) and density (Rule 38 or field rules) requirements for each listed field; otherwise, an exception to those requirements must be sought.

REGULAR locations are in accordance with either: (1) statewide spacing minimums – 467' from the nearest lease line and 1,200' from the nearest well (applied for, permitted or completed) on the same lease in the same reservoir and statewide density minimums – 40 acres; (2) spacing and density minimums, which may vary according to depth, for County Regular Fields (Districts 7B, 9, and McCulloch County), where there are no field rules and the proposed depth is 5,000' or shallower; or (3) spacing and density standards set out in special rules for the field. Field and County Regular rules are available on the Internet at www.rrc.state.tx.us.

EXCEPTIONS to minimum standard spacing and density requirements may be requested. The application requires additional information on a *certified* plat (see I, below), a list of names and addresses of all offsetting operators or unleased mineral interest owners of each tract that is contiguous to the drill site tract. Clearly key the list to the plat so that each tract/operator can be readily identified. If you do not have the right to develop the minerals under any right-of-way that crosses or is contiguous to this tract and the well requires a Rule 37 or 38 exception, also list the name and address of the entity that holds that right. If requesting only a lease-line spacing exception, list only the names and addresses of all affected persons for tracts closer to the well than the greater of ½ the prescribed minimum between-well spacing distance or the minimum lease-line spacing distance. If requesting only a between-well spacing exception, list only the names and addresses of all affected persons for each adjacent tract and each tract nearer to the well than the greater of ½ the prescribed minimum between-well spacing distance or the minimum lease-line spacing. *NOTE:* If you penetrate a Rule 37 or 38 field/reservoir not listed on the application, you will not necessarily be allowed to use the existence of this wellbore as justification for an exception to complete this wellbore in such field/reservoir in the future.

G. ACREAGE – OTHER

Pooled Units: Multiple tracts may be pooled together to meet minimum drilling unit acreage requirements. Complete and attach Form P-12, *Certificate of Pooling Authority*. On the plat (see I, below) outline pooled unit AND each tract listed on the Form P-12.

Substandard Acreage: Complete and submit a Form W-1A, *Substandard Acreage Drilling Unit Certification*, with the first and only well on a substandard tract or lease, and when using surplus acreage as a substandard pooled unit.

Contiguous Acres: Rule 39 requires that all acres in the lease or pooled unit be contiguous. If a Rule 39 exception has already been granted for the subject lease or unit, provide the docket number and issuance date in the box in the upper left-hand corner of the Form W-1.

H. PLAT. All drilling permit applications must be accompanied by a legible, accurate plat, with a scale of 1" = 1,000' and showing at least the lease or pooled unit line nearest the proposed location AND the nearest section/survey lines; however, the plat for the initial well on the lease or pooled unit must be of the entire lease or unit (including all tracts being pooled). If necessary, submit the large area plat in a scale of 1" = 2,000' showing the entire lease. Plats for Rule 37 and/or 38 exceptions must also be certified and have offsets keyed to the offset listing (see G, above). The plat must include: (1) The surface location of the proposed drilling site (for directional wells, also indicate projected bottom-hole location and for horizontal wells also indicate projected penetration points and terminus locations); (2) a line from the surface location to the nearest point on the lease line or pooled unit line. If there is an unleased interest in a tract of the pooled unit that is nearer than the pooled unit line, use the nearest point on that unleased tract boundary. Indicate distance; (3) a perpendicular line from two nearest non-parallel survey/section lines to the proposed surface and the proposed bottomhole or terminus locations. Indicate distances; (4) a line from the proposed surface location to the nearest oil or gas well (applied for, permitted, or completed) in the same lease or pooled unit and in the same field (also indicate the distance and the API number of that well); (5) the name, as applicable, of the county, survey, abstract, section, block, lot, subdivision, etc.; (6) A scale bar; and (7) the northerly direction.

I. INDIVIDUAL ITEMS ON THE FRONT OF FORM W-1:

Item 4. If the lease name at the bottomhole location is different from that at the surface location, indicate the bottomhole lease name.

Item 8. Provide the projected true vertical, not measured, depth. If this is a plug-back recompletion, give the depth of the plug setting.

Item 10. If the well is subject to Rule 36, you must file a Form H-9 with the appropriate RRC district office.

Item 13. Enter the appropriate Surface Location Code: L = land; B = bay/estuary; I = inland waterway; and O = offshore.

Item 19. For pooled units, if there is an unleased interest in a tract of the pooled unit that is nearer than the pooled unit line, give the distance to the nearest point on that unleased tract boundary.

Item 29. Well Type. Use the following O = oil; B = oil and gas; I = injection/disposal, R = storage, S = service, V = water supply, C = cathodic protection, T = exploratory test (core, stratigraphic, seismic, sulfur, uranium).

Item 30. Enter the approximate depth at which you may complete in each field you list. This depth must be less than or equal to the Total Depth.

Item 31. Required only for wells identified as oil or gas in Item 28. The nearest well includes any applied for or permitted location or completed well.

Item 32. Provide the total combined number of oil and gas wells only (include all applied for or permitted oil and gas locations, and completed oil and gas wells). Do NOT include injection, disposal or other types of service wells.

J. OTHER METHODS OF FILING. Before you may initially file computer generated paper Forms W-1, the Commission must approve the template. You may also electronically file drilling permit applications. For information, call (512)463-6838 or check the Commission's webpage at www.rrc.state.tx.us.

Railroad Commission of Texas
Oil and Gas Division
Application for Permit to Drill, Recomplete or Re-Enter

Form W-1D Draft 12-02-03
Directional Well Information

1. RRC Operator Number	2. Operator Name (as shown on P5 Organization Report)	3. Lease Name	4. Well No.

Lateral Drainhole Location Information

5. Associated Field

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Bottom hole Lease Line Perpendiculars #1
_____ ft. from the _____ line and _____ ft. from the _____ line.

12. Bottom hole Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

13. Associated Field

DRAFT

14. Section	15. Block	16. Survey	17. Abstract	18. County of BHL

19. Bottom hole Lease Line Perpendiculars #2
_____ ft. from the _____ line and _____ ft. from the _____ line.

20. Bottom hole Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

21. Associated Field

22. Section	23. Block	24. Survey	25. Abstract	26. County of BHL

27. Bottom hole Lease Line Perpendiculars #3
_____ ft. from the _____ line and _____ ft from the _____ line.

28. Bottom hole Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

Railroad Commission of Texas - Oil and Gas Division
Application for Permit to Drill, Recomplete or Re-Enter

Form W-1H Draft 12-02-03
Horizontal Well Information

1. RRC Operator Number	2. Operator Name (as shown on P5 Organization Report)	3. Lease Name	4. Well Number

Lateral Drainhole Location Information

5. Associated Field

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Terminus Lease Line Perpendiculars #1
_____ ft. from the _____ line and _____ ft. from the _____ line.

12. Terminus Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

13. Penetration Point Lease Line Perpendiculars
_____ ft. from the _____ line and _____ ft. from the _____ line.

14. Associated Field

15. Section	16. Block	17. Survey	18. Abstract	19. County of BHL

DRAFT

20. Terminus Lease Line Perpendiculars #2
_____ ft. from the _____ line and _____ ft. from the _____ line.

21. Terminus Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

22. Penetration Point Lease Line Perpendiculars
_____ ft. from the _____ line and _____ ft from the _____ line.

23. Associated Field

24. Section	25. Block	26. Survey	27. Abstract	28. County of BHL

29. Terminus Lease Line Perpendiculars #3
_____ ft. from the _____ line and _____ ft from the _____ line.

30. Terminus Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

31. Penetration Point Lease Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

MONTHLY PRODUCTION REPORT

PR
WWW-1
Draft 12-02-03

TYPE OR PRINT USING BLACK OR DARK BLUE INK

RAILROAD COMMISSION OF TEXAS

Oil and Gas Division
(1701 N. Congress)
P.O. Box 12967 – Capitol Station
Austin, Texas 78711-2967

Operator Name

Operator Address

City State Zip

P-5 Operator No. RRC Dist No.

Production Month/Year

READ INSTRUCTIONS ON BACK

☐ Check here if CORRECTED REPORT Page ____ of ____

EXACTLY AS SHOWN ON RRC PRORATION SCHEDULE				OIL/CONDENSATE (whole barrels) – Total for Month					GAS (MCF) – Total for Month		
Field Name (list alphabetically) Lease Name (for gas leases provide well #)	OGP	RRC Identifier if assigned	Commingling Permit No.	On hand beginning of month	Production	DISPOSITION Volume	DISPOSITION Code	On hand end of month	Formation Production	DISPOSITION Volume	DISPOSITION Code
1	2	3	4	5	6	7	8	9	10	11	12

OIL/CONDENSATE DISPOSITION CODES		GAS DISPOSITION CODES
0. pipeline	71. other- change of operator	1. lease or field fuel use
1. truck	72. other- road oil	2. transmission line
2. tank car or barge	73. other- lease use	3. processing plant
3. tank cleaning net oil/ condensate	74. other- production lost to formation	4. vented or flared
4. circulating oil	75. other	5. gas lift
5. lost or stolen	8. skim liquid hydrocarbons	6. repressure and pressure maintenance
6. sedimentation		7. carbon black
		8. underground storage

SEE BACK FOR EXPLANATION OF DISPOSITION CODES

CERTIFICATION

Name (type or print) _____ Signature _____

Title _____ Phone w/AC _____ Date _____

I certify that I am authorized to make this report, that it was prepared by me or under my supervision and direction, and that the information stated herein is true, correct and complete to the best of my knowledge.

INSTRUCTIONS **FORM PR: MONTHLY PRODUCTION REPORT** **REFERENCE: STATEWIDE RULES 27, 54, AND 58(B)**

FILING REQUIRED. File Form PR monthly for all crude oil, casinghead gas, gas well gas, and condensate produced. File a PR for any month there is any production, whether the production was prior to or after initial completion, or stock on hand. If the final well on a lease is recompleted or reclassified and there is stock on hand, continue reporting that stock on a PR under the old RRC ID number until the stock is disposed of.

WHEN AND WHERE TO FILE. The original of the monthly PR report is due in the Commission's Austin Office on or before the last day of the month following the month covered by the report. Upon the request of any transporter authorized to remove liquid hydrocarbon from the lease, you are required to supply that transporter with copies of all PR reports, including corrected reports, until requested to discontinue doing so.

CORRECTED REPORTS. Place an X in the corrected report box. List ONLY those leases being corrected. Give all identification information and monthly figures (Columns 1-12) for each listed lease.

ORDER OF THE REPORT AND CERTIFICATION INFORMATION. File a separate report for each RRC District. List field names alphabetically. Under each field, list lease names in the numerical order of the RRC ID number. Report lease total production and disposition for each lease. For new leases not yet assigned a RRC number, use the drilling permit or API number. For multiple page reports covering one district, (1) number the pages sequentially within the district (e.g. page 1 of 15), (2) staple together the pages for the district, and (3) complete the certification section at the bottom of each page.

COMMINGLED PRODUCTION. Report surface commingling of oil/condensate on Form PR. If a lease is commingled under only one commingle permit number, report the total oil and gas production and disposition for the lease in Columns 1-12, listing the commingle permit number in Column 4. If a lease is commingled under multiple commingle permits, provide the lease total oil and gas production in Columns 1-12, leaving the commingle permit number blank in Column 4. Directly under the "lease total production," list the lease and commingle permit number. Provide the oil/condensate production and disposition volumes by commingle permit numbers in Columns 3-9, but do not list gas production for the commingled production breakdown. The total of all oil/condensate volumes by commingle permit must equal the lease total volume reported on the line above.

VOLUMES. Give volumes for each lease as monthly totals, in whole numbers, computed by accepted standards of measurement. Do not use decimals, fractions, or negative numbers. See disposition information below.

OIL/CONDENSATE. Column 6 only is for actual oil/condensate produced. Do not include water or circulating or frac fluids (oil, condensate or refined oil) brought from another lease. Do not show as a disposition oil used from stock tanks to frac or treat the same lease until you have determined that the oil/condensate will never be recovered; at that time use oil/condensate disposition code 74. The volumes in Column 5 plus Column 6 minus Column 7 must equal the volume in Column 9 for each lease. NOTE: If skim liquid hydrocarbons are charged back by a disposal facility, include the charged volume in Column 6 as oil/condensate production. Show the same volume in Column 7 as a disposition with an oil/condensate disposition code 8 for skim oil/condensate.

CASINGHEAD CONDENSATE/GAS. Report all gas produced regardless of disposition. This includes test production and vented or flared gas, as well as regular production. Use MCF (thousand cubic feet) at base pressure of 14.65 psi and base temperature of 60°F. Under formation production Column 10, show gross production volumes after meter corrections have been applied. Column 10 must equal Column 11 for each lease. NOTE: It is no longer necessary to report a minimum of 1 MCF casinghead gas production to account for dissolved gas. It is also not necessary to report gas lift gas injected volumes; however, if you produce gas that is used for gas lift, show the initial disposition of that gas with gas disposition code 5. In addition, you no longer need to convert the liquid volume to a gas equivalent volume – the volume will be converted automatically.

DISPOSITION. Enter in Column 8 an oil/condensate disposition code for each oil/condensate disposition volume shown in Column 7. Enter a gas/casinghead gas disposition code in Column 12 for each gas/casinghead gas disposition volume shown in Column 11. You may use more than one code; however, do not use the same code more than once in Column 8 or Column 12. Show all dispositions according to the initial use or purpose.

CRUDE OIL/CONDENSATE DISPOSITION CODES:

0 Pipeline **1 Truck** **2 Tank car or barge**

3 Net oil/condensate from commercial tank cleaning – as calculated on the basis of a shakeout test. Show BS&W as oil disposition Code 6.

4 Circulating oil/condensate – original movement off lease. File a notification letter with the appropriate district office and Austin.

5 Lost or stolen – includes loss from fire, leaks, spills, and breaks, as well as theft. File Form H-8 if more than 5 barrels.

6 Sedimentation – BS&W from commercial tank cleaning. Show net oil/condensate as oil/condensate disposition Code 3.

71 Other – change of operator

72 Other – road oil

73 Other – lease use

74 Other – production lost to formation.

75 Other – Provide a detailed explanation on the form.

8 Skim liquid hydrocarbons – as charged back on Form P-18 by a disposal system.

CASINGHEAD/GAS WELL GAS DISPOSITION CODES:

1 Lease or field fuel use – gas used or given to others for field operations including lease drilling fuel, compressor fuel, etc.

2 Transmission line – gas delivered to a transmission line that will not be processed further before ultimate use, including gas used for industrial purposes, irrigation or refinery fuel, etc.

3 Processing plant – total gas delivered to a gas processing plant (any plant or facility reported on Form R-3). Do not report the "plant breakdown" of the gas on this PR.

4 Vented or flared.

5 Gas Lift – gas you use, sell or give to others directly for gas lift. Do not include gas delivered to pressure maintenance or processing plants even though it is ultimately used for gas lift.

6 Repressure or pressure maintenance – gas delivered to a system or plant that does not extract liquid hydrocarbons. That system or plant will report on Form R-7. (A pressure maintenance plant or system that does extract liquid hydrocarbons must file Form R-3. If gas delivered to a plant or system that recovers liquid hydrocarbons, use casinghead gas disposition code 3 even though the gas ultimately may be injected for pressure maintenance.)

7 Carbon black – gas delivered to a carbon black plant.

8 Underground storage – gas injected directly into a storage reservoir.

NOTE: Operators wishing to file on continuous feed paper or computer-generated forms or electronically must receive prior approval. Contact the Oil and Gas Division's Production/Permitting Services section for more information.

Draft 12-02-03

In addition, the Commission is currently beginning work on several other Commission forms for the fiscal year 2004 Oil and Gas Migration (OGM) project. These forms include Form T-1, Monthly Transportation and Storage Report; Form P-4, Producer's Transportation Authority and Certificate of Compliance; and Form P-5, Organization Report. The Commission specifically solicits comments on these forms even though they are not part of the current proposal.

Comments on the proposed amendments to §3.80 or these proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission specifically requests comments and information on the proposed form changes that are part of this rulemaking, and on any Commission form that might be affected in the future because of the OGM Project or other factors. The Commission will accept comments on the forms listed in this notice for 30 days after publication of the proposed amendments to §3.80 in the *Texas Register*, and encourages all interested persons to submit comments on the forms no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

TRD-200308493
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: December 11, 2003

♦ ♦ ♦

Texas Department of Transportation

Notice of Availability of Draft Environmental Impact Statement

Pursuant to 43 TAC §2.43(e)(4)(B), the Texas Department of Transportation (TxDOT) is issuing a notice of availability of a draft environmental impact statement to advise the public that the Federal Highway Administration, in cooperation with TxDOT, has approved and made available a draft environmental impact statement (DEIS) for a proposed project to construct the "Kelly Parkway" highway project in and near southwest San Antonio, Texas.

The proposed project termini are at US 90, at General Hudnell Drive, and SH 16, south of the San Antonio city limits in Bexar County, Texas. The length of the proposed project is approximately 8.8 miles. The proposed Kelly Parkway would be a four-lane divided highway with 12-foot travel lanes, ten-foot outside shoulders and four-foot inside shoulders. Right-of-way would fluctuate from 200 feet in the northern portion to 250 feet in the south. The median would be 26 feet wide north of Southwest Military Drive and 48 feet wide to the south. The highway facility would be paralleled by a 14-foot wide shared use path.

The purpose of and need for the proposed facility is to accommodate access and mobility needs related to traffic growth in the southwest San Antonio area and the redevelopment of Kelly Air Force Base (Kelly USA) and nearby areas. The proposed project calls for either reconstructing an existing facility or building a new-location facility, designed to be a direct link from Kelly USA and the Union Pacific South San Antonio Intermodal Rail Terminal to IH 35, IH 410, US 90 and State Highway 16.

A full range of modal alternatives was examined for the proposed Kelly Parkway during the development of Mobility 2025, the San Antonio Metropolitan Transportation Plan. The proposed Kelly Parkway is included in this region's long range metropolitan transportation plan as a highway facility to be developed in combination with transit accommodations to serve Kelly USA. The social, economic, and environmental impacts for eight alternatives and the no build alternative were evaluated in the DEIS. The recommended alternative for the proposed facility includes improvements to the US 90 at General Hudnell Drive interchanges, widening General Hudnell Drive along the Union Pacific Railroad, a new-location roadway south of Union Pacific Railroad, along Quintana Road, and intermodal changes along the railyard to SH 16.

The draft EIS is available for public and agency review at the Texas Department of Transportation San Antonio District Office, Kelly Island, Mendez Café, South San Recreational Center, Mary's Snack Bar and Grill, Brenda's Burgers, St. Joseph's, St. John Burchman, Kingdom's Hall, St. Philip's Southwest Campus, Palo Alto College, Las Palmas CPS Substation, Dwight Middle School, Carrillo Elementary School, Lowell Middle School, Kelly Elementary School, and South San High School. A public hearing will also be held. Public notice will be given of the time and place for the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. The deadline for the receipt of comments is 5:00 p.m., February 10, 2004.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to David Casteel, P.E., District Engineer, San Antonio District, Texas Department of Transportation, P.O. Box 29928, San Antonio, Texas 78284, or by telephone at (210) 615-1110.

TRD-200308514
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 11, 2003

♦ ♦ ♦

WorkSource of the South Plains

Request for Bids for Fiscal Monitoring Services

The South Plains Regional Workforce Development Board (d.b.a. WorkSource of the South Plains) is seeking bids from qualified consultants to perform fiscal monitoring services.

This Request for Proposals (RFP) will be released on December 12, 2003. To request a copy of the RFB document, contact Christine Veazey at (806) 744-1987.

The deadline for submission of proposals is 5:00 p.m., January 9, 2004. The WorkSource of the South Plains reserves the right to accept or reject any proposals.

WorkSource of the South Plains is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request for individuals with disabilities.

TRD-200308537
Christine Veazey
Manager of Contracts and Quality Assurance
WorkSource of the South Plains
Filed: December 11, 2003

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 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 a 30-day 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.

Open Meetings - notices of open meetings.

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 26 (2001) is cited as follows: 26 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 "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 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 subscription information, see the back cover or 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 (using Arabic numerals) and Parts (using Roman 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 19, April 13, July 13, and October 12, 2001). 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).

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