TEXAS REGISTER

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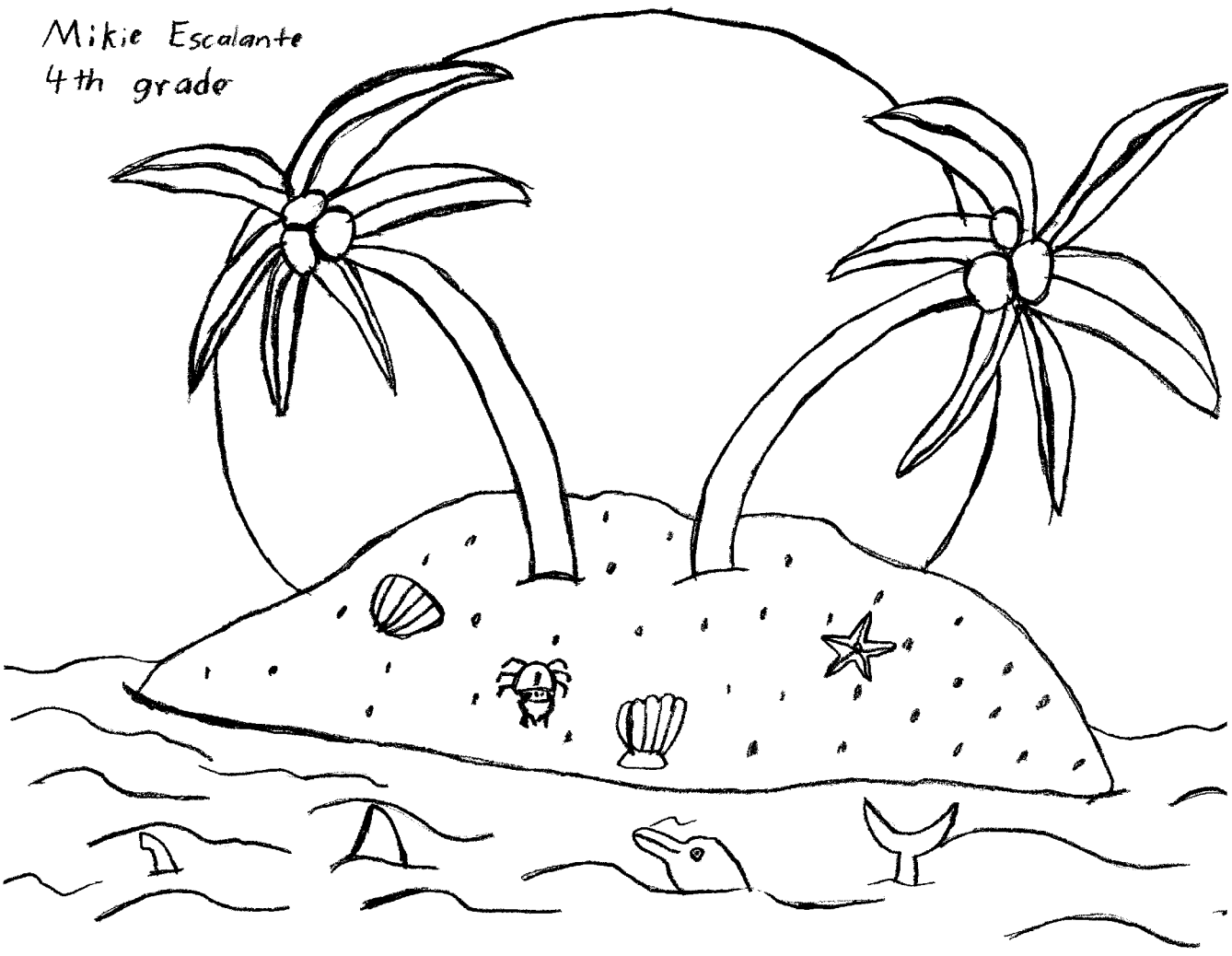

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

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 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.

Republish Request for Opinion

RQ-0233-GA

Requestor:

The Honorable Joe Driver

Chair, Committee on Law Enforcement

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Requestor:

The Honorable Robert Duncan

Chair, Committee on State Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Licensing requirements under the Texas Electrical Safety and Licensing Act (Request No. 0233-GA)

Briefs requested by July 17, 2004

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

TRD-200404494
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 12, 2004

♦ ♦ ♦

Request for Opinion

RQ-0244-GA

Requestor:

Mr. Paul D. Cook

Acting Executive Director

Texas Board of Professional Engineers

1917 IH-35 South

Austin, Texas 78741

Re: Whether the seal of a professional engineer licensed in Texas may be placed on engineering plans, specifications, and other documents that are not to be constructed or created in Texas (Request No. 0244-GA)

Briefs requested by August 13, 2004

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

TRD-200404527
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 14, 2004

♦ ♦ ♦

Opinions

Opinion No. GA-0213

The Honorable Mary Denny

Chair, Committee on Elections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Proper procedure, under article III, section 24a of the Texas Constitution, for the Speaker of the House of Representatives to nominate individuals to serve as members of the Texas Ethics Commission (RQ-0194-GA)

S U M M A R Y

Subsection (a)(3), article III, section 24a of the Texas Constitution requires that the Speaker of the House of Representatives appoint a Republican to the Texas Ethics Commission from a list of at least ten names submitted by Republican members of the House; and that he appoint a Democrat from a list of at least ten names submitted by Democratic members of the House. Nothing in article III, section 24a requires that the names be submitted by formal caucus or through any other sort of joint action of a political party. Rather, the Texas Constitution accords to individual *members* the right to submit to the Speaker the names of suggested appointees

Opinion No. GA-0214

D.C. Jim Dozier, J.D., Ph.D.

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

6330 U.S. Highway 290 East, Suite 200

Austin, Texas 78723

Re: Whether a peace officer may simultaneously hold a commission from more than one law enforcement agency (RQ-0163-GA)

S U M M A R Y

Unless a peace officer holds a "civil office" within Texas Constitution article XVI, section 40, that provision does not bar him from being employed and commissioned by two law enforcement agencies. A peace officer holds an office within article XVI, section 40, if a sovereign function of government is conferred upon him to be exercised for the benefit of the public largely independent of the control of others. This test must be applied on a case-by-case basis considering facts relevant to the specific peace officer's authority.

A peace officer does not violate the common-law doctrine of incompatibility solely because he is employed and commissioned by two different law enforcement entities and is responsible to two different employers. The common-law doctrine of incompatibility does not reach the practical difficulties involved in holding two positions. Attorney General Opinions O-1263 (1939) and H-727 (1975) are overruled to the extent they incorrectly define the common-law doctrine of incompatibility.

Opinion No. GA-0215

The Honorable Robert E. Talton

Chairman, Urban Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a peace officer may order the removal of a disabled vehicle to a location other than a licensed vehicle storage facility when the driver has not given consent to the removal (RQ-0164-GA)

S U M M A R Y

Section 545.305 of the Transportation Code authorizes a peace officer to order a nonconsent tow of certain vehicles to a nearby place of safety. However, section 643.206 of the Transportation Code does not authorize a towing company to assess a nonconsenting owner or interest holder a towing fee without taking the vehicle to a licensed vehicle storage facility.

Opinion No. GA-0216

The Honorable Kurt Sistrunk

Galveston County Criminal District Attorney

722 Moody, Suite 300

Galveston, Texas 77550

Re: Procedure for filling a vacancy in the office of district clerk (RQ-0165-GA)

S U M M A R Y

The district judges of Galveston County must unanimously assent to the appointment of a district clerk. If the judges cannot agree, they must certify that fact to the governor, who is required to order a special election to fill the vacancy.

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

TRD-200404518
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 13, 2004

EMERGENCY RULES

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 50. 2004 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §50.9

The Texas Department of Housing and Community Affairs (the Department) adopts on an emergency basis the amendment of §50.9 concerning Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations. The section is amended in order to enact changes conforming to Attorney General Opinion GA-0208.

This amended section is adopted on an emergency basis pursuant to Chapter 2306, Texas Government Code, which provides the Governing Board of the Department with the authority to adopt rules necessary for the efficient administration of the Department's Housing Tax Credit Program.

§50.9. Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations.

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

(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)-(2) (No change.)

(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. (7 points)[~~(10 points)~~]

(4) (No change.)

(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. (7 points maximum)[~~(20 points maximum)~~].

(6) (No change.)

(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)-(E) (No change.)

(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% (7 points)[~~(8 points)~~]; or,

(ii) 85% (6 points); or,

(iii) 90% (4 points); or

(iv) 95% (2 points).

(G) (No change.)

(8)-(10) (No change.)

(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 Code of Federal Regulations, §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)-(E) (No change.)

(F) Points will be awarded as follows:

(i) If all Units in the Development are designed solely for transitional housing for homeless persons, 7[~~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, 5[~~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)-(C) (No change.)

(D) Rent Levels of the Units. Applications will receive up to maximum of 10 additional points for restricting the rent levels of the Units under paragraphs (12) and (13) of this subsection. The total points available for paragraphs (12)(A) through (C) and (13) are 20 points. The percentage of points awarded under those sections will be calculated and that percentage applied to a maximum of 10 additional points to determine the number of points to be awarded. All calculations will be rounded using basic mathematical principles. (Example: If an application receives 16 of the 20 points for items (12)(A) through (C) and (13), which is 80% of the possible points, then the application will receive 8 additional points under this subparagraph (D), which is 80% of the possible points. A half point will be rounded up to the nearest whole number).

(13) (No change.)

(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 14[~~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 14[~~9~~] points)

(i) A contribution of $500 to $1,000 per Low Income Unit receives 4[~~3~~] points; or

(ii) A contribution of $1,001 to $3,500 per Low Income Unit receives 8[~~6~~] points; or

(iii) A contribution of $3,501 to $6,000 per Low Income Unit receives 14[~~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 14[~~9~~] points)

(i) Development-Based Vouchers for 3% to 5% of the total Units receives 4[~~3~~] points; or

(ii) Development-Based Vouchers for 6% to 8% of the total Units receives 8[~~6~~] points; or

(iii) Development-Based Vouchers for 9% to 10% of the total Units receives 14[~~9~~] points.

(15)-(18) (No change.)

(h)-(i) (No change.)

This agency hereby certifies that the emergency adoption 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 July 12, 2004.

TRD-200404493
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective Date: July 12, 2004
Expiration Date: November 8, 2004
For further information, please call: (512) 475-4595

♦ ♦ ♦

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 50. 2004 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §50.9

The Texas Department of Housing and Community Affairs (the Department) proposes the amendment of §50.9 concerning Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations. The section is amended in order to enact changes conforming to Attorney General Opinion GA-0208.

Edwina Carrington, Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Carrington also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the fair administration of the scoring criteria consistent with the Attorney General Opinion GA-0208 for the efficient and coordinated allocation of federal income tax credit authority available to the state for administration of state housing agencies. There will be no effect on small businesses or persons. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments may be submitted to Jennifer Joyce, Program Analyst, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: jennifer.joyce@tdhca.state.tx.us.

The proposed new sections are proposed under the Texas Government Code, Chapter 2306; the Internal Revenue Code of 1986, §42, as amended, 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 tax credit allocations in the State of Texas.

No other code, article or statute is affected by these new sections.

§50.9. Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations.

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

(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)-(2) (No change.)

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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.

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(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. (7 points)[~~(10 points)~~]

(4) (No change.)

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(6) (No change.)

(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)-(E) (No change.)

(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% (7 points)[~~(8 points)~~]; or,

(ii) 85% (6 points); or,

(iii) 90% (4 points); or

(iv) 95% (2 points).

(G) (No change.)

(8)-(10) (No change.)

(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 Code of Federal Regulations, §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)-(E) (No change.)

(F) Points will be awarded as follows:

(i) If all Units in the Development are designed solely for transitional housing for homeless persons, 7[~~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, 5[~~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)-(C) (No change.)

(D) Rent Levels of the Units. Applications will receive up to maximum of 10 additional points for restricting the rent levels of the Units under paragraphs (12) and (13) of this subsection. The total points available for paragraphs (12)(A) through (C) and (13) are 20 points. The percentage of points awarded under those sections will be calculated and that percentage applied to a maximum of 10 additional points to determine the number of points to be awarded. All calculations will be rounded using basic mathematical principles. (Example: If an application receives 16 of the 20 points for items (12)(A) through (C) and (13), which is 80% of the possible points, then the application will receive 8 additional points under this subparagraph (D), which is 80% of the possible points. A half point will be rounded up to the nearest whole number).

(13) (No change.)

(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 14[~~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 14[~~9~~] points)

(i) A contribution of $500 to $1,000 per Low Income Unit receives 4[~~3~~] points; or

(ii) A contribution of $1,001 to $3,500 per Low Income Unit receives 8[~~6~~] points; or

(iii) A contribution of $3,501 to $6,000 per Low Income Unit receives 14[~~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 14[~~9~~] points)

(i) Development-Based Vouchers for 3% to 5% of the total Units receives 4[~~3~~] points; or

(ii) Development-Based Vouchers for 6% to 8% of the total Units receives 8[~~6~~] points; or

(iii) Development-Based Vouchers for 9% to 10% of the total Units receives 14[~~9~~] points.

(15)-(18) (No change.)

(h)-(i) (No change.)

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

Filed with the Office of the Secretary of State on July 12, 2004.

TRD-200404492
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 475-4595

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER C. STANDARDS OF IDENTITY OF MALT BEVERAGES

16 TAC §45.77

The Texas Alcoholic Beverage Commission proposes an amendment to §45.77 governing permissible and prohibited language on malt beverage labels.

Under the current rule, certain class designations of malt beverages traditionally associated with malt liquors could not be placed on the labels of beer. Conversely, class designations historically associated with beer could not be placed on malt liquor labels. Under Texas law, the distinction between beer and malt liquor is determined by alcoholic content. Class designations relate to method of manufacture, however, and are not necessarily indicative of alcoholic content. The proposed amendment allows malt beverage manufacturers to place class designations like "porter," "stout" or "lager" regardless of whether that product is beer or malt liquor.

Lou Bright, General Counsel, has determined that for the first five-year period this amendment is in effect there will be no fiscal impact on units of state or local government as a result of enforcing this amendment. The proposed amendment imposes no mandatory requirements, but only broadens the scope of permissible conduct by manufacturers of malt beverages. Accordingly, there is no anticipated fiscal impact on small businesses or individuals.

Mr. Bright has determined that for each year of the first five years the amendment is in effect, the public will benefit from more accurate product descriptions allowed by this amendment.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under §5.31 of the Alcoholic Beverage Code, which gives the commission authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Sections 101.41 and 101.43 of the Alcoholic Beverage Code are affected by this amendment.

§45.77. Class and Type.

(a) The class of the malt beverage (such as "beer," "lager," "lager beer," "ale," "porter," or "stout") shall be stated, and if desired, the type thereof may be stated.

(b) No product containing less than 0.5% of alcohol by volume shall bear the class designation "beer," "lager," "lager beer," "ale," "porter," or "stout," or any other class or type designation commonly applied to malt beverages containing 0.5% or more of alcohol by volume.

(c) No beer shall bear the [~~any~~] class designation of ale or malt liquor, [~~except one denoting beer,~~] and no malt liquor shall bear the [~~any~~] class designation of [~~denoting~~] beer. Nothing shall prevent a beer or malt liquor from also bearing a class or style designation that is recognized in the brewing industry, such as, but not limited to, "porter," "stout," or "lager," provided such beer or malt liquor has the characteristics of such class or style.

(d) Geographical names for distinctive types of malt beverages (other than names found by the commission or administrator under subsection (e) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless: in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wartzburger.

(e) Only such geographical names for distinctive types of malt beverage as the commission or administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic. Pilsen beer (Pilsenor, Pilsner) is a distinctive type of beer with a geographical name which has become generic.

(f) Except as provided in §45.75 of this title (relating to Mandatory Label Information for Malt Beverages), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

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 July 12, 2004.

TRD-200404476
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 206-3204

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16 TAC §45.90

The Texas Alcoholic Beverage Commission proposes an amendment to §45.90 governing advertisement of malt beverages.

Under the current rule, malt beverages classified as beer under Texas law cannot be designated in advertising by class designations, like "porter" or "stout" that are historically associated with malt liquor. In Texas law, the distinction between beer and malt liquor is based on alcoholic content. By contrast, class designations relate to manufacturing process and not necessarily to alcoholic content. Accordingly, this amendment would allow manufacturers greater latitude in providing consumers with more accurate descriptions of their product. This amendment is proposed in conjunction with a similar amendment to §45.77 regulating malt beverage labels.

Lou Bright, General Counsel, has determined that for the first five-year period this amendment is in effect there will be no fiscal impact on units of state or local government as a result of enforcing this amendment. The proposed amendment imposes no mandatory requirements, but only broadens the scope of permissible conduct by manufacturers of malt beverages. Accordingly, there is no anticipated fiscal impact on small businesses or individuals.

Mr. Bright has determined that for each year of the first five years the amendment is in effect, the public will benefit from more accurate product descriptions allowed by this amendment.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under §5.31 of the Alcoholic Beverage Code, which gives the commission authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Sections 101.41 and 101.43 of the Alcoholic Beverage Code are affected by this amendment.

§45.90. Prohibited Statements.

(a) *General.* An advertisement of malt beverages shall not contain the following:

(1) any statement that is false or misleading in any material particular;

(2) any statement that is disparaging of a competitor or his products;

(3) any statement, design, device or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(6) any statement that the malt beverages are brewed, made, bottled, labeled, or sold under, or in accordance with, any municipal, state, or federal authorization, law or regulation; and if a municipal or state permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;

(7) the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, or bottling.

(b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(c) *Class.*

(1) No product containing less than 0.5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.

(2) No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as an "ale" or "malt liquor." [~~"ale," "porter," or "stout" or by any other class or type designation commonly applied to malt beverages containing 4.0% or more of alcohol by weight.~~]

(d) *Curative and therapeutic effect.* The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.

(e) *Confusion of brands.* Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are in any respect untrue.

(f) Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

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 July 12, 2004.

TRD-200404475
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 232. GENERAL REQUIREMENTS APPLICABLE TO ALL CERTIFICATES ISSUED

SUBCHAPTER R. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.850, §232.851

The State Board for Educator Certification proposes amendments to §232.850 and §232.851, relating to Certificate Renewal and Continuing Professional Education Requirements that would establish a prorated schedule of continuing professional education (CPE) hours that may be used by educators seeking to renew multiple classes of standard certificates issued with different effective dates during the same five-year renewal cycle.

The proposed amendments would provide relief to educators who have a limited period of time to complete CPE hours for renewal of an additional class of standard certificate issued late in the five-year renewal cycle.

The proposed amendments would accomplish the following: (1) change language in §232.850 to indicate that the appropriate number of CPE hours must be completed during each five-year renewal period for each class of certificate held; (2) add language in §232.850 that would allow educators who are issued an additional class of certificate after the beginning of the five-year renewal cycle to satisfy renewal requirements by completing a minimum of one-fifth of the required CPE hours for each full year that the additional class of certificate is valid; (3) add language to §232.851 to clarify that the holder of more than one class of standard certificate would be required to complete no more than 200 CPE hours for renewal of all certificates held.

Steve Wright, Chief Financial Officer, State Board for Educator Certification, has determined for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Lisa Patterson, Legal Services, State Board for Educator Certification, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be efficient and updated rules governing the assignment of public school educators. The purpose of the rules is to clarify renewal requirements and provide relief to educators who will renew multiple classes of certificates issued during the same five-year renewal cycle.

In accordance with Section 2001.022, Government Code, SBEC has determined that the adopted rule will not impact local economies and, therefore, has not filed a request for a local employment impact statement with the Texas Workforce Commission.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed. There will be no affect to small or micro businesses.

If adopted, the proposed rules would be a governmental action providing for the certification of a public school educator and regulating a school district's assignment of a holder of an educator certificate, which is a state-granted privilege, in accordance with Chapter 21, Subchapter B, Education Code, and therefore would not affect private real property under the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Lisa Patterson, Legal Services, State Board for Educator Certification, Capitol Station, P.O. Box 12728, Austin, Texas 78711-2728, or by e-mail at "lisa.patterson@sbec.state.tx.us."

The amendments are proposed under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

No other statutes, articles, or codes are affected by the proposed amendments.

§232.850. Number and Content of Required Continuing Professional Education Hours.

(a) Standard certificate. The appropriate number of [~~At least 150~~] clock hours of continuing professional education (CPE) as specified in §232.851 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates) must be completed during each five-year renewal period. Educators should complete a minimum of 20 clock hours of CPE each year of the renewal period. An educator renewing multiple certificates should complete a minimum of five CPE clock hours each year in the content area knowledge and skills for each certificate being renewed.

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

(e) An educator renewing multiple classes of certificates issued during the same five-year renewal period may satisfy the requirements specified in §232.851 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates) for any class of certificate issued for less than the full five-year period by completing a minimum of one-fifth of the required CPE hours for each full calendar year that the class of certificate is valid.

§232.851. Number of Required Continuing Professional Education Hours by Classes of Certificates.

(a) - (k) (No change.)

(l) An educator must complete a total of 150 or 200 clock hours of continuing professional education during each five-year renewal period unless otherwise specified in this title.

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 July 12, 2004.

TRD-200404478
Herman L. Smith, Ph.D.
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 936-8239

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TITLE 22. EXAMINING BOARDS

PART 27. BOARD OF TAX PROFESSIONAL EXAMINERS

CHAPTER 629. PENALTIES, SANCTIONS, AND HEARINGS

22 TAC §629.4

The Board of Tax Professional Examiners proposes an amendment to §629.4, Penalties, Sanctions, and Hearings. This amendment ensures revocation of registration with the board requires three members vice four members.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on anyone. There is no anticipated economic cost to persons who are required to comply with this rule as proposed.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment merely ensure consistent actions by the Board.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is the assurance that all revocation of registration will only be completed with a majority of board member, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

§629.4. Revocation of Registration.

(a) (No change.)

(b) Revocation of registration may be the judgment of the board only by an affirmative vote of three [~~four~~ of its members.

(1) - (3) (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 July 6, 2004.

TRD-200404393
David E. Montoya
Executive Director
Board of Tax Professional Examiners
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 305-7300

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2

The Texas Parks and Wildlife Department proposes an amendment to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules. The amendment would allow a person to hunt deer (under certain circumstances) without being in physical possession of a hunting license, provided that the person has purchased a license electronically and possesses a department-issued authorization number valid for that transaction.

Under current regulations a person may hunt species other than deer and turkey without having a hunting license in their possession, provided the person has acquired a hunting license electronically and has a valid authorization number in their possession. Deer and turkey are not included because deer and turkey are required to be tagged upon kill. Since the tags are part of the hunting license, a license had to be physically possessed in order to comply with the tagging requirement. However, recent rulemaking action by the Texas Parks and Wildlife Commission has removed the tagging requirements for deer taken by Managed Lands Deer (MLD) Permits, Landowner Assisted Management Permits (LAMPS), by special permit under the provisions of Chapter 65, Subchapter H of this title (concerning the Public Lands Proclamation) on department lands, on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272, and by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program. Accordingly, the department seeks to allow persons who acquire a license electronically to hunt deer, provided they also possess the appropriate permit, in addition to the authorization number.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the proposed rule is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. Under current rule, persons purchasing a license by telephone are assessed a $5 convenience fee in addition to a license fee. Since the rules do not and never have allowed the purchasers of licenses sold over the telephone to hunt deer with just an authorization number (i.e., the purchasers had to wait for a license, containing tags, to be mailed to them before going deer hunting), there is no way for the department to determine how many of the licenses were sold to persons solely for the purpose of hunting deer, and thus there is no empirical data upon which to base a revenue estimate. However, in Fiscal Year 2003 the department's total telephone sales of licenses that could be used to hunt deer was 6550, which resulted in convenience-fee revenue of $32,750. Since the proposed option could only be taken advantage of by persons hunting deer on properties for which the department has issued permits, the department does not anticipate that the number of licenses sold by telephone will increase dramatically; however, some increase is expected.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit expected as a result of the proposed rule will be increased convenience for license purchasers by allowing persons to acquire a license electronically for the purposes of hunting deer under certain circumstances, thus removing the need to physically go to a license sales location to acquire a hunting license.

There will be an economic cost for persons required to comply with the rule as proposed, because the purchase of a license electronically includes a $5 convenience fee in addition to the license fee. There are no other economic costs for persons required to comply with the rule as proposed.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that the rule will not have an adverse economic effect on small or micro-businesses.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under the authority of Parks and Wildlife Code, §12.702, which authorizes the commission by rule to set collection and issuance fees for a license, stamp, tag, permit, or other similar item issued under any chapter of the code.

The proposed amendment affects Parks and Wildlife Code, Chapter 12.

§53.2. License Issuance Procedures, Fees, Possession, and Exemption Rules.

(a) Hunting license possession.

(1) No [~~A~~] person may hunt [~~species other than deer or~~] turkey in this state without having a valid hunting license in immediate possession.

(2) A person may hunt species other than turkey in this state without having a valid hunting license in immediate possession if that person has acquired a license electronically (including by telephone) and has a valid authorization number in his possession. Authorization numbers shall only be valid for 20 days from date of purchase.

(3) A person may hunt deer in this state without having a valid hunting license in immediate possession only if that person:

(A) has acquired a license electronically (including by telephone) and has a valid authorization number in his possession; and

(B) is lawfully hunting:

(i) under the provisions of §65.26 of this title (relating to Managed Lands Deer (MLD) Permits);

(ii) under the provisions of §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(iii) by special permit under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation);

(iv) on department-leased lands under the provisions of Parks and Wildlife Code, §11.0272; or

(v) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) - (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 July 12, 2004.

TRD-200404484
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 389-4775

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31 TAC §53.6

The Texas Parks and Wildlife Department proposes an amendment to §53.6, concerning saltwater stamp fees. The amendment increases the future fee for the Saltwater Sportfishing Stamp. The amendment would function by removing the expiration date from the $3 surcharge to the saltwater sportfishing stamp fee. The amendment is necessary to maintain or accelerate the department's commercial fishing license buyback programs for shrimp, crab, and finfish, established in Texas Parks and Wildlife Code, §§77.119, 78.111, and 47.081, respectively.

The license buyback funds are used for purchasing and retiring commercial crab, finfish, bait shrimp, and bay shrimp boat licenses, which reduces the number of license holders and fishing effort in these fisheries. The proposal to maintain the $3 surcharge (or to increase the current saltwater stamp by $3 when the current $3 surcharge expires) will help to accelerate the buyback programs in future years.

Currently, the buyback programs for each fishery under a limited entry system (crab, finfish and inshore shrimp) are supported by a percentage of the license fees collected to fish or participate in the fishery. In addition, the department during the 2000-01 license year established the existing $3 surcharge on the saltwater sportfishing stamp, which generated approximately $1.4 million per year. The license buyback programs depend on voluntary sellers to offer their licenses to be purchased by the department. To date, most of the funds expended have been used for the purchase of commercial bay and bait shrimp fishing boat licenses. This is primarily due to the size of the fishery and that the inshore shrimp fishery was the first limited entry program and buyback program established.

Following the implementation of the $3 surcharge, the average annual purchase of commercial bay and bait shrimp fishing boat licenses increased 43.5% per year. Another way of expressing this difference, based on the average number of licenses bought back each of the three years before there was a surcharge compared to the average number bought back each of the four years with funding from a surcharge, is that 216 commercial bay and bait shrimp fishing boat licenses were purchased that could not have otherwise been purchased. To date, $6,372,855 has been spent in the purchase of 1,084 commercial bay and bait shrimp fishing boat licenses. Additionally, during the same period $716,107 has been spent purchasing 25 commercial crab fishing boat licenses and 125 commercial finfish fishing boat licenses. While the program has been successful from its inception in reducing license numbers and is showing evidence of reducing fishing effort, the ability to continue to purchase licenses at the current pace is dependent on the continuation of the $3 saltwater surcharge.

Mr. Robin Riechers, policy and science director of the Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rules, consisting of approximately $1.4 million in additional revenues for the funding of license buyback programs. The revenue estimates are based on the annual average of saltwater stamps sold in Fiscal Year 2001, 2002, and 2003 (461,328 original licenses sold). Since this is a continuation of a current surcharge on the saltwater stamp there is not expected to be a decline in sales associated with the continuation of the surcharge. There will be no fiscal implications for units of local government as a result of administering or enforcing the rule.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed, will be: (a) additional revenues to fund the license buyback program and the purchase and retirement of licenses, benefiting those remaining in the industry by reducing competition; and, (b) reduced fishing pressure on shrimp, crab, and finfish fisheries, which creates public benefits by enhancing the populations of those species and the overall health of the ecosystem.

There will be no adverse economic costs to small businesses or micro-businesses. There will be a cost to persons required to comply with the rule as proposed, namely, the $3 increase in the cost of a Saltwater Sportfishing Stamp for persons who fish in the salt water of this state after Fiscal Year 2005.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies. The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us.

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter M, which authorizes the commission to set the fee for the saltwater sportfishing stamp.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

(a) (No change.)

(b) The items listed in this subsection may be sold individually or as part of a package. Stamps sold individually shall be valid from the date of purchase or the start date of the license year, whichever is later, through the last day of the license year. Stamps sold as part of a fishing package shall be valid for the same time period as the license included in the package as specified in this rule. The price of these stamps are as follows:

(1) (No change.)

(2) saltwater sportfishing stamp--$7 plus a saltwater sport fishing stamp surcharge of $3 [~~(surcharge to be effective until September 1, 2005)~~]. A red drum tag shall be issued at no additional charge with each saltwater sportfishing stamp.

(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.

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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §53.15

The Texas Parks and Wildlife Department proposes an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The amendment would impose an application fee of $12 for a cormorant control permit.

The double-crested cormorant (*Phalacrocorax auritus*) is a long-lived, colonial-nesting waterbird native to North America, and is the most abundant of six species of cormorants occurring in North America. The current continental population of double-crested cormorants is estimated to be 2 million birds, and is increasing. The diet of the double-crested cormorants is mainly fish. Adults eat an average of one pound per day, usually comprised of small (less than 6 inch) bottom dwelling or schooling "forage" fish. They are opportunistic and generalist feeders, preying on many species of fish, but concentrating on those that are easiest to catch. In many areas, the double-crested cormorant has become a nuisance species, causing damage to aquaculture and public fisheries resources.

The double-crested cormorant is a protected species under the Migratory Bird Treaty Act of 1918, and federal approval is required to take, possess, or disturb them. The U.S. Fish and Wildlife Service (Service) in 1998 allowed U.S. Department of Agriculture Wildlife Services to conduct winter roost control on double-crested cormorants and later established a public resource depredation order to allow state wildlife agencies, Tribes, and U.S. Department of Agriculture's Wildlife Services to conduct control activities for the protection of public resources in 13 states. The Service has now expanded the depredation order to include an additional 11 states, including Texas. The proposed new section is necessary to create a mechanism to protect public fisheries resources from depredation by double-breasted cormorants.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the proposed rule is in effect, there will be no net fiscal implications to state government as a result of enforcing or administering the rule, since the fee imposed by the rule will result in revenue equivalent to the administrative cost of issuing permits, evaluating annual reports, and maintaining records. The department anticipates demand for the permits to be on the order of 2,000 per year. The department also estimates that the cost of processing and issuing the permits, collecting and analyzing annual reports, and summarizing the data from the annual reports for submission to the Service will be approximately $24,000 per year. Therefore, dividing the number of permits expected to be issued by the cost expected to be incurred yields the proposed fee per permit. There will be no fiscal implications to units of state or local government as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit expected as a result of the proposed rule will be the control of negative impacts of cormorants on public fisheries resources.

There will be economic costs for persons required to comply with the rule as proposed. The rule will require each person who seeks to control cormorants to pay a fee of $12 for the processing and issuance of a permit. The fee also covers the department's cost in maintaining records and reviewing annual reports from permittees. There are no other economic costs for persons required to comply with the rule as proposed.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that the rule will not have an adverse economic effect on small or micro-businesses.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to John Herron, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4771; e-mail: john.herron@tpwd.state.tx.us.

The amendment is proposed under the authority of Parks and Wildlife Code, §67.0041, which authorizes the issuance of permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species, and authorizes the commission to set a fee for a permit.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§53.15. Miscellaneous Fisheries and Wildlife Licenses and Permits.

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

(g) Miscellaneous fees:

(1) - (5) (No change.)

(6) oyster lease renewal /transfer/sale--$200; and

(7) double-crested cormorant control permit--$12.

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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Chief of Staff
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CHAPTER 65. WILDLIFE
SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.102

The Texas Parks and Wildlife Department proposes an amendment to §65.102, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds, commonly known as 'Triple T' permits. The proposed amendment would clarify provisions governing testing protocols for chronic wasting disease for persons seeking Triple T permits to move white-tailed deer. In 2003, the department issued 26 Triple T permits authorizing the relocation of deer. Although this number represents an infinitesimally small percentage of all landowners and deer in Texas, it nevertheless is significant from an epidemiological standpoint, since it represents animals that are being moved from place to place in a fashion that would not normally occur in nature, thus increasing the risk of disease transmission far beyond what exists naturally in wild populations of free-ranging deer. Therefore, the proposed amendment is necessary to ensure the integrity of the department's strategy to monitor for chronic wasting disease (CWD) in wild populations of white-tailed deer and minimize the risk of moving the disease if it is present.

The proposed amendment would correct an inaccurate use of terminology. The current rule requires deer to be tested and 'certified 100% negative.' When the rule was adopted, the department was unaware that the terminology used by the Texas Veterinary Medical Diagnostic Laboratory described three possible test results: 'positive,' 'location,' and 'not detected.' Therefore, the amendment would remove the phrase '100% negative' and add a sentence to subsection (a) stating that permits will be issued only if the test result for each deer in a sample is 'not detected.' The proposed amendment also makes it clear that the department will not authorize Triple T activities that involve a trap site where CWD has been detected. The provisions of the department's stocking policy, codified at 31 TAC Chapter 52 , are sufficient authority to deny permit issuance on the basis of impacts to ecosystems; however, the department would prefer to absolutely certain that the ability to deny a permit on this basis is understood. The proposed amendment also clarifies that samples must be collected and tested within 12 months of the permit year for which a permit is sought. The intent is to prevent the 'stockpiling' of samples, which would negatively impact the functionality of the department's sampling plan by confounding the assumption that test results characterize disease detection efforts through time. In the same vein, the proposed amendment stipulates that no test result be used more than once, with the exception that approved movement could take place in the next year. For instance, if a permittee received authorization to move 100 deer but only moved 50, that person could apply for a Triple T permit the following year, re-submit the test results, and receive authorization to move the remaining 50 deer. However, any deer beyond the number remaining from the previous year would trigger the testing requirements. This portion of the proposed amendment is necessary to acknowledge that from an epidemiological standpoint, a statistically valid sample at a given point in time is sufficient to satisfy the department's disease-detection and risk-assessment protocols for a year. Additionally, on smaller properties it is problematic for individuals to collect a sufficient number of samples within one trapping season and still accomplish the trapping activities.

The current rule was adopted in November 2002, after consultation with the Texas Animal Health Commission and the MLD/TTT Task Force (an external advisory group of landowners and wildlife managers appointed by then-Chairman Lee M. Bass). Under the current rule, the department will not issue any permits to trap, transport and transplant white-tailed deer unless a specified number of adult deer at the trap site have been tested for Chronic Wasting Disease (CWD). CWD is a transmissible spongiform encephalopathy that has been detected in free-ranging deer populations in other states and Canada. Since CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. What is known is that CWD can be and is passed from deer to deer and is invariably fatal. Although no deer have tested positive for CWD in Texas, the department cannot categorically discount the presence of the disease in the state. Therefore, the department must address any and all threat potentials for the introduction, transmission, or spread of CWD in order to discharge its statutory duty to manage and protect wildlife resources (in this case, deer) in this state. Free ranging white-tailed deer and mule deer have been found to be infected with CWD in Wisconsin, New Mexico, Illinois, South Dakota, Nebraska, Wyoming, Utah, and Colorado and within confined infected elk and white-tailed deer facilities in Oklahoma, Colorado, Wyoming, Montana, South Dakota, Nebraska, Minnesota, and Wisconsin. Each area where the disease has been detected is a significant distance from other known infected herds, which indicates that agents other than natural dispersion are involved (e.g., trapping and transplanting operations). The department has for many years authorized the trapping and transplanting of deer under the Triple T permit program; therefore, any area of the state may be at risk, however slight, which cannot be categorically be ruled out at the present time. Any deer trapped and transplanted within Texas conceivably could have been in contact with a CWD-positive deer prior to being trapped and transplanted and could thus be a vector for introducing the disease to additional areas of the state. The continued transport of deer could potentially further spread the disease. Therefore, the department determined that the practice of trapping and transplanting deer is a potential mechanism for the spread of CWD.

The impact of an outbreak of CWD in Texas could be significant. Texas has one of the most extensive white-tailed deer herds in the United States and the quality of animals that come from Texas are known throughout the world. Over one-third of the 4 million white-tailed deer in Texas are found in about 25% per cent of the geographical area of Texas. Over $600 million dollars are spent by white-tailed deer hunters in rural communities each year, over half of which is spent in the Edward's Plateau, Pineywoods, and South Texas regions. Fully one quarter of this revenue is spent in the Edward's Plateau alone. Therefore, the

department must remain vigilant in the face of potential disease threats to the resource.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule as proposed.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit expected as a result of the proposed rule will be the continued and enhanced protection of native deer from communicable diseases, thus ensuring the public of continued enjoyment of the resource and the protection of the state's $2.5 billion per year hunting industry.

There will be no adverse economic cost for small businesses, micro-businesses, or persons required to comply with the rule as proposed, as the proposed amendment does not alter the current cost of compliance.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; e-mail: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds under the subchapter, and §43.0611, which requires the commission to adopt rules for fees, applications, and activities, including limitations on the times of the activities, relating to permits for trapping, transporting, or transplanting white-tailed deer.

The amendment affects Parks and Wildlife Code, Chapters 43, Subchapter E.

§65.102. Limitation of Applicability.

(a) Until this section is repealed, no permits to trap, transport, and transplant white-tailed deer or mule deer shall be issued by the department unless a sample of adult deer from the trap site equivalent to 10% of the number of deer to be transported has been tested [~~and certified 100% negative~~] for chronic wasting disease by the Texas Veterinary Medical Diagnostic Laboratory.

(1) The department will not authorize trapping activities unless the test result for each deer in the minimum required sample is 'not detected.'

(2) The department will not issue a permit for any activity involving a trap site from which a 'detected' result for chronic wasting disease has been obtained.

(3) [~~(1)~~] The sample size shall be no more than 40 or less than ten animals.

(4) [~~(2)~~] The test results required by this section shall be presented to the department prior to the transport of any deer.

(5) [~~(3)~~] All deer released shall be marked in one ear with a department-assigned identification number.

(6) A test result is not valid if the sample was collected or tested prior to October 1 of the previous permit year.

(7) Except as provided in paragraph (8) of this subsection, a test result shall not be used more than once to satisfy the requirements of this section.

(8) If a permittee traps, transports, and transplants fewer deer than are authorized in a given permit year, that permittee may trap, transport, and transplant the remaining deer the following year from the same trap site without having to provide new samples for testing; however, the person must apply for a new Triple T permit and must re-submit the test results from the previous year. If the application for a new Triple T permit specifies a number of deer greater than the remainder from the previous year, the requirements of paragraphs (1)-(4) of this subsection apply to the additional deer.

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

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

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SUBCHAPTER W. SPECIAL PERMITS

31 TAC §65.901

The Texas Parks and Wildlife Department proposes new §65.901, concerning Cormorant Control Permit. The new section would create a permit to authorize landowners and their authorized agents to carry out cormorant control activities on behalf of Texas Parks and Wildlife Department; require any person who takes a cormorant under a permit to record the date and location of take and the number of cormorants killed; require the person to whom a permit is issued to submit an annual report to the department accounting for all cormorants taken under a permit; require all persons acting under a permit to abide by applicable federal law; and establish an offense for failure to abide by permit conditions. The permit conditions will specify that cormorants must be dispatched by firearm (non-toxic shot), cervical dislocation, or asphyxiation; that control actions take place only during daylight hours, and that landowner permission be obtained. The cost of the permit would be $12; the proposed rulemaking to establish the fee is published elsewhere in this issue.

The double-crested cormorant (*Phalacrocorax auritus*) is a long-lived, colonial-nesting waterbird native to North America, and is the most abundant of six species of cormorants occurring in North America. The current continental population of double-crested cormorants is estimated to be 2 million birds, and is increasing. The diet of the double-breasted cormorant is mainly

fish. Adults eat an average of one pound per day, usually comprised of small (less than 6 inch) bottom dwelling or schooling "forage" fish. They are opportunistic and generalist feeders, preying on many species of fish, but concentrating on those that are easiest to catch. In many areas, the double-crested cormorant has become a nuisance species, causing damage to public fisheries resources.

The double-crested cormorant is a protected species under the Migratory Bird Treaty Act of 1918, and federal approval is required to take, possess, or disturb them. The U.S. Fish and Wildlife Service (Service) in 1998 allowed U.S. Department of Agriculture Wildlife Services to conduct winter roost control on double-breasted cormorants and later established a public resource depredation order to allow state wildlife agencies, Tribes, and U.S. Department of Agriculture's Wildlife Services to conduct control activities for the protection of public resources in 13 states. The Service has now expanded the depredation order to include an additional 11 states, including Texas. Under the order, TPWD may authorize agents to conduct lethal control activities. The proposed new section is necessary to create a mechanism to protect public fisheries resources from depredation by double-breasted cormorants. Since most of Texas consists of private lands, the wintering areas for cormorants in Texas are in close proximity to public waters. Therefore, allowing control on private lands will have direct benefits to public fisheries resource in Texas.

Since the fee for the proposed cormorant control permit is proposed in another rulemaking, the department includes in this preamble a discussion of the fee for the convenience of the reader.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the proposed rule is in effect, there will be no net fiscal implications to state government as a result of enforcing or administering the rule, since the application fee being proposed elsewhere in this issue will result in revenue equivalent to the administrative cost of issuing the permits, evaluating annual reports, and maintaining records. The department anticipates demand for the permits to be on the order of 2,000 per year. The department also estimates that the cost of processing and issuing the permits, collecting and analyzing annual reports, and summarizing the data from the annual reports for submission to the Service will be approximately $24,000 per year. Therefore, dividing the number of permits expected to be issued by the cost expected to be incurred yields the proposed fee per permit. There will be no fiscal implications to units of state or local government as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit expected as a result of the proposed rule will be the control the negative impacts of cormorants on public fisheries resources.

There will be economic costs for persons required to comply with the rule as proposed. The rules will require each person who seeks to control cormorants to pay a fee of $12 for the processing and issuance of a permit. The fee also covers the department's cost in maintaining records and reviewing annual reports from permittees. There are no other economic costs for persons required to comply with the rule as proposed.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that the rule will not have an adverse economic effect on small or micro-businesses.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to John Herron, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4771; e-mail: john.herron@tpwd.state.tx.us.

The new rule is proposed under the authority of Parks and Wildlife Code, §67.0041, which authorizes the issuance of permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species, and authorizes the commission to set a fee for a permit.

The proposed new rule affects Parks and Wildlife Code, Chapter 67.

§65.901. Cormorant Control Permit.

A permit issued under this section is valid only for the take of double-crested cormorants and does not authorize the wounding, disturbing, or taking of any other bird which otherwise is protected by any applicable provision of the Parks and Wildlife Code or a regulation of the department.

(1) The department may issue a permit authorizing the take of double-crested cormorants (*Phalacrocorax auritus*) on private lands and waters.

(2) Each permit is valid only for the tract or tracts of land for which it is issued.

(3) Each permit shall be issued to a named individual who is the owner of or authorized agent for the tract of land for which the permit is issued.

(4) Each person to whom a permit is issued shall complete and submit an annual report on a form supplied by the department by no later than August 1 of each year.

(5) Any person in possession of a valid hunting license may conduct control activities on double-crested cormorants, provided that person also possesses upon their person a copy of a permit issued for the tract of the land where the control activities take place. The copy of the permit must be signed in person by the person to whom the permit was issued.

(6) The department will not issue a permit to any person who has, within the three years immediately prior to an application for a permit, been convicted of or subject to deferred adjudication for a violation of the Texas Parks and Wildlife Code or a regulation of the department.

(7) Each person conducting control activities under the provisions of this section shall comply with all applicable provisions of the federal regulations located at 50 CFR, Part 21, §21.48, including restrictions on means and methods, lawful shooting hours, and disposal of carcasses.

(8) It is an offense to:

(A) take any bird other than a double-crested cormorant under a permit issued under this section;

(B) use a permit on any tract of land other than that for which it was issued; or

(C) fail to abide by any condition of a permit issued under the provisions 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.

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CHAPTER 69. RESOURCE PROTECTION SUBCHAPTER B. FISH AND WILDLIFE VALUES

31 TAC §69.22, §69.30

The Texas Parks and Wildlife Department proposes amendments to §69.22 and §69.30, concerning the department's rules for recovering monetary damages from persons who take wildlife or fisheries resources in violation of the law. In 1985, the Texas Legislature amended the Parks and Wildlife Code to provide that a person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of the code or a proclamation or regulation adopted under the code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured. Since that time, the department has actively sought full restitution for fish and wildlife loss occurring as a result of unlawful activities. The current values by which restitution amounts for wildlife species are calculated have not been changed since 1985, with the exception of the rules governing the value of trophy wildlife species, which were adopted in 1996. During the intervening time, economic factors such as inflation and real dollar equivalence (relative to the values established in 1985 and 1996) have eroded the deterrent power of the current restitution values for wildlife species. In addition, the cost to the department of administering and enforcing the rules has increased for the same economic reasons. Therefore, the department intends to adjust the basic recovery values (upon which the calculations of civil recovery are based) for wildlife species. By statute, the recovery value of injured or destroyed wildlife is determined on a per animal basis. For each animal, a value is assigned for each of eight scoring criteria. Those scores are summed to create a total criteria score, which is then multiplied by a weighting factor to adjust for variance in public demand and/or perception of value. The adjusted criteria score has a corresponding recovery value, which the violator is then assessed. The value of trophy wildlife species is determined by a formula based on the animal's Boone and Crockett score.

Research indicates that the Consumer Price Index (CPI) has increased 1.677 points between 1986 and 2003. The proposed amendment would increase the criteria score values to reflect the change in the CPI, which is necessary to maintain recovery values that are similar to the original values relative to current economic factors. In the case of trophy animals, the proposal reflects the approximate current market value of trophy-quality hunting opportunity for white-tailed deer, mule deer, pronghorn antelope, and desert sheep.

The amendment to §69.22, concerning Wildlife-Recovery Values, changes the various monetary values across the continuum of the scoring range used to determine the value of wildlife species. The proposed values were produced by multiplying the current values by 1.677, which is the amount that the Consumer Price Index has increased since 1985, the last year in which wildlife values were adjusted.

The amendment to §69.30, concerning Trophy Wildlife Species, changes the dollar-value coefficient used to calculate the final restitution value for trophy white-tailed or mule deer, pronghorn antelope, and desert bighorn sheep, and places white-tailed deer and mule deer in separate categories. The proposed dollar-value coefficient for each species was obtained by deriving a function for the curve from the lowest Boone and Crockett score for which trophy restitution can be assessed through the highest Boone and Crockett score, intersecting the mean market values for each, which were obtained by consulting department personnel, landowners, and published advertising for trophy hunting opportunity. The amendment also removes references to elk, because the Texas Legislature in 1997 designated elk as an exotic species and the department no longer possesses any regulatory authority with respect to that species. In addition, the department wishes to note that when the original adoption was published, the software of the time was unable to reproduce the superscript notation to indicate the squaring function was to be applied. The proposed changes rectify that situation.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the proposed rules are in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. The department anticipates that it will realize an additional $70,393 per year as a result of the increased restitution values for wildlife species, and $15,835 for trophy species. The estimates were derived by taking the average dollar value of the wildlife restitution recovered by the department per year over the last five years ($103,683) and multiplying that number by 1.677 (the factor by which the current values are being raised). The same technique was employed to arrive at an estimate for trophy species, multiplying the five-year average yearly recovery for each trophy species ($8,324 for white-tailed deer; $1,801 for mule deer; $150 for pronghorn antelope; and $0 for desert bighorn sheep) by the dollar-value coefficient (1.65 for white-tailed deer; 1.00 for mule deer; 2.00 for pronghorn antelope; and 11.7 for desert bighorn sheep). There will be no fiscal implications to other units of state or local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect:

The public benefit expected as a result of the proposed rules will be twofold: first, the increased recovery of costs related to loss of wildlife as a result of illegal take of those species, and second, the continued protection of those resources as a result of the department's ability to deter violators.

There will be economic costs for persons required to comply with the rules as proposed; however, those costs are dependent on the type and number of wildlife that a person has been convicted

of illegally taking, so the department is unable to provide a specific quantification.

The department has determined that the rules will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

The department has determined that the rules will not have an adverse economic effect on small or micro-businesses.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rules.

Comments on the proposed rules may be submitted to Kris Bishop, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4630; e-mail: kris.bishop@tpwd.state.tx.us.

The amendments are proposed under the authority of Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals.

The proposed amendments affect Parks and Wildlife Code, Chapter 12.

§69.22. Wildlife--Recovery Values.

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

(d) The total criteria score multiplied by the weighting factor in subsections (a)-(c) of this section, provides an adjusted criteria score and corresponding recovery value for each species.
Figure: 31 TAC §69.22(d)

§69.30. Trophy Wildlife Species.

(a) The recovery value for [~~each~~] individual white-tailed or mule deer, [~~elk,~~] pronghorn antelope, and bighorn sheep shall be derived from the gross Boone and Crockett score of the horns or antlers plus the value derived for wildlife species in §69.22 of this title (relating to Wildlife--Recovery Values), using the following formulae:

(1) White-tailed [~~and mule~~] deer--The formula for white-tailed [~~and mule~~] deer shall be applied to all individuals whose gross score exceeds 100 Boone and Crockett inches. The formula shall be: Recovery Value = ((gross score - 100)^2 [(~~(gross score - 100)2~~] x $1.65 [~~$1.00~~]) plus the value derived in §69.22 of this title.

(2) Mule deer--The formula for mule deer shall be applied to all individuals whose gross score exceeds 110 Boone and Crockett inches. The formula shall be: Recovery Value = ((gross score - 110)^2 x $1.00) plus the value derived in §69.22 of this title.

[~~(2) Elk--The formula for elk shall be applied to all individuals whose gross score exceeds 200 Boone and Crockett inches. The formula shall be: Recovery Value = ((gross score - 200)2 x $.50) plus the value derived in §69.22 of this title.~~]

(3) Pronghorn antelope--The formula for pronghorn antelope shall be applied to all individuals whose gross score exceeds 40 Boone and Crockett inches. The formula shall be: Recovery Value = ((gross score - 40)^2 [(~~(gross score - 40)2~~] x $2.00 [~~$5.00~~]) plus the value derived in §69.22 of this title.

(4) Bighorn sheep--The formula for bighorn sheep shall be applied to all individuals whose gross score exceeds 100 Boone and Crockett inches. The formula shall be: Recovery Value = ((gross score - 100)^2 [(~~(gross score - 100)2~~] x $11.70 [~~$10~~]) plus the value derived in §69.22 of this title.

(b) The measurement procedure for obtaining the Boone and Crockett gross score shall follow: Nesbitt, W.H. and P.L. Wright. 1985. Measuring and Scoring North American Big Game Trophies. Boone and Crockett Club. 176 pp.

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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Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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PART 16. COASTAL COORDINATION COUNCIL

CHAPTER 501. COASTAL MANAGEMENT PROGRAM

The Texas Coastal Coordination Council (Council) proposes amendments to §501.3, relating to Definitions and Abbreviations, the repeal of §501.14, and new §§501.16 - 501.34.

The Council proposes to amend §501.3(b)(15) to delete the reference to fishery habitat and fishery resources in the definition of Water of the open Gulf of Mexico. Effective August 27, 2000, the Council listed National Marine Fisheries Service promulgation of fishery management measures for the Gulf of Mexico as a federal activity subject to consistency review under the Texas Coastal Management Program (CMP), and added the reference to fishery habitat and fishery resources in the definition of Water of the open Gulf of Mexico in §501.3(b)(15). Effective January 28, 2004, the Council delisted National Marine Fisheries Service promulgation of fishery management measures for the Gulf of Mexico as an activity subject to consistency review under the CMP, so the reference to fishery habitat and fishery resources in §501.3(b)(15) is not necessary. Thus, the Council is proposing to delete the reference in §501.3(b)(15).

The Council proposes an amendment to §501.3(c)(7) to reflect the name change of the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ). The 78th Texas Legislature changed the name of the TNRCC to the TCEQ, effective September 1, 2003.

The Council proposes the repeal of §501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas. Simultaneously, the Council proposes new §501.16, relating to Policies for Construction of Electric Generating and Transmission Facilities; new §501.17, relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities; new §501.18, relating to Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities; new §501.19, relating to Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities; new §501.20, relating to Policies for Prevention, Response and Remediation of Oil

Spills; new §501.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters; new §501.22, relating to Policies for Nonpoint Source (NPS) Water Pollution; new §501.23, relating to Policies for Development in Critical Areas; new §501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; new §501.25, relating to Policies for Dredging and Dredged Material Disposal and Placement; new §501.26, relating to Policies for Construction in the Beach/Dune System; new §501.27, relating to Policies for Development in Coastal Hazard Areas; new §501.28, relating to Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers; new §501.29, relating to Policies for Development in State Parks, Wildlife Management Areas or Preserves; new §501.30, relating to Policies for Alteration of Coastal Historic Areas; new §501.31, relating to Policies for Transportation Projects; new §501.32, relating to Policies for Emission of Air Pollutants; new §501.33, relating to Policies for Appropriations of Water; and new §501.34, relating to Policies for Levee and Flood Control Projects.

The Council proposes the repeal of §501.14 simultaneously with a proposal to add new §§501.16 - 501.34 to renumber the Council's policies because all of the Council's policies for specific activities and coastal natural resource areas (CNRAs) are contained in subsections of that section. The reasoned justification for this rulemaking is that with each of the policies in a separate section, the Council's policies become easier to reference and easier to amend. If the Council proposes an amendment to any one of the policies, the Council cannot propose any other actions concerning the policies until after the effective date of the earlier proposed action. The Texas Register's rules do not allow an agency to propose an amendment to a rule if a previous action on the same rule has not yet become effective. This could delay the implementation of necessary amendments to the policies. Thus, the Council is proposing to repeal §501.14 simultaneously with a proposal to add new §§501.16 - 501.34 to renumber the Council's policies with no changes other than the renaming of the TNRCC to the TCEQ and the deletion of §501.14(t), relating to Marine Fishery Management. In a rule adoption published in the January 23, 2004, issue of the *Texas Register* (29 TexReg 639) the Council delisted National Marine Fisheries Service promulgation of fishery management measures for the Gulf of Mexico as an activity subject to consistency review under the CMP, so the policies for Marine Fishery Management are not necessary. Thus, the Council is proposing to delete the policies in §501.14(t) without adding a new section containing those policies for Marine Fishery Management.

The Council proposes new §501.16, titled Policies for Construction of Electric Generating and Transmission Facilities. The language in new §501.16 is the same language currently in §501.14(a), so the new section does not represent a substantive change in the Policies for Construction of Electric Generating and Transmission Facilities.

The Council proposes new §501.17, titled Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities. The language in new §501.17 is the same language currently in §501.14(b), so the new section does not represent a substantive change in the Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

The Council proposes new §501.18, titled Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities. The language in new §501.18 is the same language currently in §501.14(c), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.

The Council proposes new §501.19, titled Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities. The language in new §501.19 is the same language currently in §501.14(d), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities.

The Council proposes new §501.20, titled Policies for Prevention, Response and Remediation of Oil Spills. The language in new §501.20 is the same language currently in §501.14(e), so the new section does not represent a substantive change in the Policies for Prevention, Response and Remediation of Oil Spills.

The Council proposes new §501.21, titled Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters. The language in new §501.21 is the same language currently in §501.14(f), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters.

The Council proposes new §501.22, titled Policies for Nonpoint Source (NPS) Water Pollution. The language in new §501.22 is the same language currently in §501.14(g), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Nonpoint Source (NPS) Water Pollution.

The Council proposes new §501.23, titled Policies for Development in Critical Areas. The language in new §501.23 is the same language currently in §501.14(h), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Development in Critical Areas.

The Council proposes new §501.24, titled Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands. The language in new §501.24 is the same language currently in §501.14(i), so the new section does not represent a substantive change in the Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands.

The Council proposes new §501.25, titled Policies for Dredging and Dredged Material Disposal and Placement. The language in new §501.25 is the same language currently in §501.14(j), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Dredging and Dredged Material Disposal and Placement.

The Council proposes new §501.26, titled Policies for Construction in the Beach/Dune System. The language in new §501.26 is the same language currently in §501.14(k), so the new section does not represent a substantive change in the Policies for Construction in the Beach/Dune System.

The Council proposes new §501.27, titled Policies for Development in Coastal Hazard Areas. The language in new §501.27 is the same language currently in §501.14(l), so the new section does not represent a substantive change in the Policies for Development in Coastal Hazard Areas.

The Council proposes new §501.28, titled Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers. The language in new §501.28 is the same language currently in §501.14(m), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers.

The Council proposes new §501.29, titled Policies for Development in State Parks, Wildlife Management Areas or Preserves. The language in new §501.29 is the same language currently in §501.14(n), so the new section does not represent a substantive change in the Policies for Development in State Parks, Wildlife Management Areas or Preserves.

The Council proposes new §501.30, titled Policies for Alteration of Coastal Historic Areas. The language in new §501.30 is the same language currently in §501.14(o), so the new section does not represent a substantive change in the Policies for Alteration of Coastal Historic Areas.

The Council proposes new §501.31, titled Policies for Transportation Projects. The language in new §501.31 is the same language currently in §501.14(p), so the new section does not represent a substantive change in the Policies for Transportation Projects.

The Council proposes new §501.32, titled Policies for Emission of Air Pollutants. The language in new §501.32 is the same language currently in §501.14(q), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Emission of Air Pollutants.

The Council proposes new §501.33, titled Policies for Appropriations of Water. The language in new §501.33 is the same language currently in §501.14(r), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Appropriations of Water.

The Council proposes new §501.34, titled Policies for Levee and Flood Control Projects. The language in new §501.34 is the same language currently in §501.14(s), except for the change of TNRCC to TCEQ, so the new section does not represent a substantive change in the Policies for Levee and Flood Control Projects.

Bill Peacock, Deputy Commissioner for the Texas General Land Office's Coastal Resources Division, has determined that for each year of the first five years the amendments, repeal and new sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amendments, repeal and new sections as the proposal relates solely to the operations of the Coastal Management Program.

There will be no economic cost to persons required to comply with these regulations, as the proposal applies only to internal operations of the Council. The public will benefit from the proposed amendments, repeal and new sections because there will be greater clarity and certainty in the Council's procedures for consistency review. The Council has determined that there will be no effect on small businesses, and that a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

The Council has evaluated the proposal to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The Council has determined the proposal does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Council has determined that the proposal would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the amendments, repeal and new sections being proposed.

Comments may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873; facsimile number (512) 463-6311; e-mail address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 days after the proposal is published.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §501.3

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; §33.205, which authorizes the Council to adopt rules establishing processes for preliminary consistency review and small business assistance; and §33.206(d), which authorizes the Council to adopt procedural rules for the review

of federal actions, activities, and outer continental shelf plans that incorporate provisions of federal regulations governing those reviews.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, 33.204, 33.205, and 33.206 are affected by this proposed rulemaking.

§501.3. Definitions and Abbreviations.

(a) (No change.)

(b) The following words, terms, and phrases, when used in this chapter shall have the following meanings, with respect to CNRAs.

(1) - (14) (No change.)

(15) Water of the open Gulf of Mexico--Water in this state, as defined by Texas Water Code, §26.001(5), that is part of the open water of the Gulf of Mexico and that is within the territorial limits of the state[~~, including fishery habitat and the fishery resources therein~~].

(16) (No change.)

(c) The following abbreviations, when used in this chapter, shall have the following meanings.

(1) - (6) (No change.)

(7) TCEQ--Texas Commission on Environmental Quality [~~TNRCC--Texas Natural Resource Conservation Commission~~];

(8) - (11) (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.

Filed with the Office of the Secretary of State on July 7, 2004.

TRD-200404407
Larry L. Laine
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 305-8598

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SUBCHAPTER B. GOALS AND POLICIES

31 TAC §501.14

(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 Coastal Coordination Council or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §501.14 is proposed under Texas Natural Resources Code, Chapter 33, §33.204(a), which authorizes the Council, by rule, to adopt goals and policies of the coastal management program.

Texas Natural Resources Code §33.204 is affected by the proposed repeal of this section.

§501.14. Policies for Specific Activities and Coastal Natural Resource Areas.

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 July 7, 2004.

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Larry L. Laine
Chief Clerk, General Land Office
Coastal Coordination Council
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For further information, please call: (512) 305-8598

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31 TAC §§501.16 - 501.34

The new sections are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; §33.205, which authorizes the Council to adopt rules establishing processes for preliminary consistency review and small business assistance; and §33.206(d), which authorizes the Council to adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate provisions of federal regulations governing those reviews.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, 33.204, 33.205, and 33.206 are affected by this proposed rulemaking.

§501.16. Policies for Construction of Electric Generating and Transmission Facilities.

(a) Construction of electric generating facilities and electric transmission lines in the coastal zone shall comply with the policies in this section.

(1) New electric generating facilities shall, where practicable, be located at previously developed sites. New electric generating facilities at undeveloped sites shall be located so that future expansion will avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable. To the extent applicable to the public beach, the policies in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(2) Electric generating facilities using once-through cooling systems shall be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms.

(3) Electric generating facilities shall be constructed at sites selected to have the least adverse effects practicable on recreational uses of CNRAs and on areas used for spawning, nesting, and seasonal migrations of terrestrial and aquatic fish and wildlife species.

(4) Electric transmission lines to or on Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503, on coastal barriers shall:

(A) be located, where practicable, in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects; and

(B) be located at sites at which future expansion shall avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable.

(b) The PUC shall comply with the policies in this section when issuing certificates of convenience and necessity and adopting rules under Texas Civil Statutes, Public Utility Regulatory Act, Article 1446c, governing construction of electric generating facilities, electric transmission lines, and associated facilities in the coastal zone.

§501.17. Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

(a) Oil and gas exploration and production on submerged lands shall comply with the policies in this section.

(1) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance resulting from the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or unitization, shall be employed.

(2) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this section.

(3) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.

(b) To the extent applicable to the public beach, the policies in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(c) The GLO and SLB shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, governing oil and gas exploration and production on submerged lands.

§501.18. Policies for Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.

(a) Disposal of oil and gas waste in the coastal zone shall comply with the policies in this section.

(1) No new commercial oil and gas waste disposal pit shall be located in any CNRA.

(2) Oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(b) Discharge of oil and gas exploration and production wastewater in the coastal zone shall comply with the following policies.

(1) All discharges shall comply with all provisions of surface water quality standards established by the TCEQ under §501.21 of this title.

(2) To the greatest extent practicable, new wastewater outfalls shall be located where the discharge will not adversely affect critical areas. Existing wastewater outfalls that adversely affect critical areas shall be either discontinued or relocated so as not to adversely affect critical areas within two years of the effective date of this section.

(3) The RRC shall notify the TCEQ and the TPWD upon receipt of an application for a new permit to discharge produced waters to waters under tidal influence. In determining compliance with the policies in this section, the RRC shall consider the effects of salinity from the discharge.

(c) The RRC shall comply with the policies in this section when issuing permits and adopting rules under the Texas Natural Resources Code, Chapter 91, for oil and gas waste, and under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, for oil and gas wastewater discharges.

§501.19. Policies for Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities.

(a) Construction and operation of solid waste facilities in the coastal zone shall comply with the policies in this section. This section applies to both new facilities and areal expansion of existing facilities.

(1) A landfill at which hazardous waste is received for a fee shall not be located in a critical area, critical dune area, critical erosion area, or a 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the TCEQ as of September 1, 1985.

(2) Except as provided in subparagraphs (A) and (B) of this paragraph, a hazardous waste landfill shall not be located in a special hazard area existing before site development except in an area with a flood depth of less than three feet. Any hazardous waste landfill within a special hazard area must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood event.

(A) The areal expansion of a landfill in a special hazard area may be allowed if the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(B) A new commercial hazardous waste management facility landfill unit may not be located in a special hazard area, unless the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(3) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, and storage surface impoundments shall not be located in special hazard areas unless they are designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood event.

(4) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(5) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located in coastal wetlands, or in any CNRA that is the critical habitat of an endangered species of plant or animal unless the design, construction, and operation features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(6) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located on coastal barriers.

(7) Hazardous waste landfills are prohibited if there is a practicable alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed at the landfill.

(8) The TCEQ shall not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of coastal waters.

(9) New solid waste facilities and areal expansion of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq.

(b) The TCEQ shall comply with the policies in this section when issuing permits and adopting rules under Texas Health and Safety Code, Chapter 361.

§501.20. Policies for Prevention, Response and Remediation of Oil Spills.

(a) The GLO regulations governing prevention of, response to and remediation of coastal oil spills shall provide for measures to prevent coastal oil spills and to ensure adequate response and removal actions. The GLO regulations for certification of vessels and facilities that handle oil shall be designed to ensure that vessels and facilities are capable of prompt response and adequate removal of unauthorized discharges of oil. The GLO regulations adopted pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, Chapter 40, shall be consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA; and the National Contingency Plan adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, Chapter 26.

(b) Natural Resource Damage Assessment. GLO rules under OSPRA governing the assessment of damages to natural resources injured as the result of an unauthorized discharge of oil into coastal waters shall provide for reasonable and rational procedures for assessing damages and shall take into account the unique circumstances of the spill incident. The costs of assessing the damages shall not be disproportionate to the value of the injured resources. Plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources shall provide for participation by the public and shall be designed to promote the restoration of the injured resources with all deliberate speed. The GLO rules shall be consistent with other state rules and policies and with the CMP goals and policies.

§501.21. Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(a) TCEQ rules shall:

(1) comply with the requirements of the Clean Water Act, 33 United States Code Annotated, §§1251 et seq, and implementing regulations at Code of Federal Regulations, Title 40, which include establishing surface water quality standards in order to protect designated uses of coastal waters, including the protection of uses for water supply, recreational purposes, and propagation and protection of terrestrial and aquatic life, and establishing water-quality-based effluent limits, including toxicity monitoring and specific toxicity or chemical limits as necessary to protect designated uses of coastal waters;

(2) provide for the assessment of water quality on a coastal watershed basis once every two years, as required by the Texas Water Code, §26.0135(d);

(3) to the greatest extent practicable, provide that all permits for the discharge of wastewater within a given watershed or region of a single watershed contain the same expiration date in order to evaluate the combined effects of permitted discharges on water quality within that watershed or region;

(4) identify and rank waters that are not attaining designated uses and establish total maximum daily pollutant loads in accordance with those rankings using scientifically valid models calibrated and validated with monitored data and with public input from affected stakeholders; and

(5) require that increases in pollutant loads to coastal waters shall not:

(A) impair designated uses of coastal waters; or

(B) result in degradation of coastal waters that exceed fishable/swimmable quality except in cases where lowering coastal water quality is necessary for important economic or social development.

(b) Discharge of municipal and industrial wastewater in the coastal zone shall comply with the following policies.

(1) Discharges shall comply with water-quality-based effluent limits.

(2) Discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

(3) To the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas.

(c) The TCEQ shall comply with the policies in this section when adopting rules and authorizing wastewater discharges under Texas Water Code, Chapter 26.

(d) The TCEQ shall consult with the Texas Department of Health when reviewing permit applications for wastewater discharges that may significantly adversely affect oyster reefs.

§501.22. Policies for Nonpoint Source (NPS) Water Pollution.

(a) State agencies and subdivisions with authority to manage NPS pollution shall cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters.

(b) In an area that the TSSWCB identifies as having or having the potential to develop agricultural or silvicultural NPS water quality problems or an area within the coastal zone, the TSSWCB shall establish a water quality management plan certification program that provides, through the local soil and water conservation district, for the development, supervision, and monitoring of voluntary individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under rules and criteria adopted by the TSSWCB and discharges under such a plan may not cause a violation of state water quality standards established by the TCEQ. The TSSWCB's rules shall certify a plan that satisfies the TSSWCB rules and criteria and discharges which do not cause a violation

of state water quality standards established by the TCEQ. This policy is not intended, nor shall it be interpreted, to require the TSSWCB to establish non-voluntary requirements for the development, maintenance, or implementation of individual water quality management plans.

(c) TCEQ rules under Texas Health and Safety Code, Chapter 366, governing on-site sewage disposal systems, and TCEQ rules under Texas Water Code, Chapter 26, Subchapter I, governing underground storage tanks, shall require that on-site disposal systems and underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters.

(d) This policy shall not be interpreted or applied so as to require that either a National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges issued under the Clean Water Act, §402(p), or an NPDES permit for a concentrated animal feeding operation, requiring no discharge up to and including a 25-year, 24-hour frequency storm, provide additional NPS pollution control measures in addition to those required in the permit.

§501.23. Policies for Development in Critical Areas.

(a) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this section. In implementing this section, cumulative and secondary adverse effects of these activities will be considered.

(1) The policies in this section shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

(2) Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.

(3) In evaluating practicable alternatives, the following sequence shall be applied:

(A) Adverse effects on critical areas shall be avoided to the greatest extent practicable.

(B) Unavoidable adverse effects shall be minimized to the greatest extent practicable by limiting the degree or magnitude of the activity and its implementation.

(C) Appropriate and practicable compensatory mitigation shall be required to the greatest extent practicable for all adverse effects that cannot be avoided or minimized.

(4) Compensatory mitigation includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation should be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site). If on-site compensatory mitigation is not practicable, compensatory mitigation should be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site). Compensatory mitigation should also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:

(A) on-site, in-kind;

(B) off-site, in-kind;

(C) on-site, out-of-kind; and

(D) off-site, out-of-kind.

(5) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs. Acquisition will normally be allowed only in conjunction with preferred forms of compensatory mitigation.

(6) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.

(7) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(A) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531 - 1544;

(B) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.21 of this title;

(C) the activity violates any applicable toxic effluent standard or prohibition established under §501.21 of this title;

(D) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

(E) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subsections (c) and (d) of this section, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(i) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(ii) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(iii) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(iv) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(b) The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 33, §323.4 and/or Code of Federal Regulations, Title 40, §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and the SLB shall comply with the policies in this section when approving oil, gas, or other mineral lease plans of operation or granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Civil Statutes, Article 5421u, for mitigation banks operated by subdivisions of the state.

(c) Agencies required to comply with this section will coordinate with one another and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. Those agencies' rules governing authorizations for development in critical areas shall require a demonstration that the requirements of subsection (a)(1) - (7) of this section have been satisfied.

(d) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse affects of the project need not be produced or evaluated to comply with this section if such data and information is produced and evaluated in compliance with §501.15(b) - (c) of this title.

§501.24. Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands.

(a) Development on submerged lands shall comply with the policies in this section.

(1) Marinas shall be designed and, to the greatest extent practicable, sited so that tides and currents will aid in flushing of the site or renew its water regularly.

(2) Marinas designed for anchorage of private vessels shall provide facilities for the collection of waste, refuse, trash, and debris.

(3) Marinas with the capacity for long-term anchorage of more than ten vessels shall provide pump-out facilities for marine toilets, or other such measures or facilities that provide an equal or better level of water quality protection.

(4) Marinas, docks, piers, wharves and other structures shall be designed and, to the greatest extent practicable, sited to avoid and otherwise minimize adverse effects on critical areas from boat traffic to and from those structures.

(5) Construction of docks, piers, wharves, and other structures shall be preferred instead of authorizing dredging of channels or basins or filling of submerged lands to provide access to coastal waters if such construction is practicable, environmentally preferable, and will not interfere with commercial navigation.

(6) Piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs (including artificial reefs for compensatory mitigation) shall be limited to the minimum necessary to serve the project purpose and shall be constructed in a manner that:

(A) does not significantly interfere with public navigation;

(B) does not significantly interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and

(C) avoids and otherwise minimizes shading of critical areas and other adverse effects.

(7) Facilities shall be located at sites or designed and constructed to the greatest extent practicable to avoid and otherwise minimize the potential for adverse effects from:

(A) construction and maintenance of other development associated with the facility;

(B) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and

(C) deposition of airborne pollutants in coastal waters and critical areas.

(8) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human health, safety, and welfare.

(9) To the greatest extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial and aquatic wildlife.

(10) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of §501.23 of this title. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(11) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.

(12) Developed sites shall be returned as closely as practicable to pre-project conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:

(A) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, submerged lands, or shore areas; or

(B) restoration activities would further degrade CNRAs.

(13) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.

(14) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.

(15) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.

(16) Activities on submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.

(17) Erosion of Gulf beaches and coastal shore areas caused by construction or modification of jetties, breakwaters, groins, or shore stabilization projects shall be mitigated to the extent the costs of mitigation are reasonably proportionate to the benefits of mitigation. Factors that shall be considered in determining whether the costs of mitigation are reasonably proportionate to the cost of the construction or modification and benefits include, but are not limited to, environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits.

(b) To the extent applicable to the public beach, the policies in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(c) The GLO and the SLB, in governing development on state submerged lands, shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, and Texas Water Code, Chapter 61.

§501.25. Policies for Dredging and Dredged Material Disposal and Placement.

(a) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The policies of this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public. In implementing this section, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(1) Dredging and dredged material disposal and placement shall not cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.21 of this title.

(2) Except as otherwise provided in paragraph (4) of this subsection, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with §501.23 of this title.

(3) Except as provided in paragraph (4) of this subsection, dredging and the disposal and placement of dredged material shall not be authorized if:

(A) there is a practicable alternative that would have fewer adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(B) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(C) significant degradation of critical areas under §501.23(a)(7)(E) of this title would result.

(4) A dredging or dredged material disposal or placement project that would be prohibited solely by application of paragraph (3) of this subsection may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways.

(b) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in subsection (a) of this section. Adverse effects can be minimized by employing the techniques in this subsection where appropriate and practicable.

(1) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling the location and dimensions of the activity. Some of the ways to accomplish this include:

(A) locating and confining discharges to minimize smothering of organisms;

(B) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(C) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(D) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overdredging of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(E) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(F) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(G) avoiding the impoundment or drainage of critical areas.

(2) Dredging and disposal and placement of material to be dredged shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(A) disposal or placement of dredged material in a manner that maintains physiochemical conditions at discharge sites and limits or reduces the potency and availability of pollutants;

(B) limiting the solid, liquid, and gaseous components of material discharged;

(C) adding treatment substances to the discharged material; and

(D) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(3) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways of accomplishing this include:

(A) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaching;

(B) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;

(C) capping in-place contaminated material or, selectively discharging the most contaminated material first and then capping it with the remaining material;

(D) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and

(E) timing the discharge to minimize adverse effects from unusually high water flows, wind, wave, and tidal actions.

(4) Adverse effects from dredging and dredged material disposal or placement can be minimized by controlling the manner in which material is dispersed. Some ways of accomplishing this include:

(A) where environmentally desirable, distributing the material in a thin layer;

(B) orienting material to minimize undesirable obstruction of the water current or circulation patterns;

(C) using silt screens or other appropriate methods to confine suspended particulates or turbidity to a small area where settling or removal can occur;

(D) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;

(E) minimizing turbidity by using a diffuser system or releasing material near the bottom;

(F) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms; and

(G) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.

(5) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adapting technology to the needs of each site. Some ways of accomplishing this include:

(A) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;

(B) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and

(C) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.

(6) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:

(A) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;

(B) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;

(C) avoiding sites having unique habitat or other value, including habitat of endangered species;

(D) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics;

(E) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;

(F) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and

(G) avoiding the destruction of remnant natural sites within areas already affected by development.

(7) Adverse effects on human use potential from dredging and dredged material disposal or placement can be minimized by:

(A) selecting sites and following procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the site, particularly with respect to water quality;

(B) selecting sites which are not valuable as natural aquatic areas;

(C) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and

(D) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.

(8) Adverse effects from new channels and basins can be minimized by locating them at sites:

(A) that ensure adequate flushing and avoid stagnant pockets; or

(B) that will create the fewest practicable adverse effects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or

(C) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs;

(D) provided that, for any dredging of new channels or basins subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this paragraph if such data and information is produced and evaluated in compliance with §501.15(b)(1) of this title.

(c) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of subsection (a) of this section unless modified in design, size, use, or function.

(d) Dredged material from dredging projects in commercially navigable waterways is a potentially reusable resource and must be used beneficially in accordance with this policy.

(1) If the costs of the beneficial use of dredged material are reasonably comparable to the costs of disposal in a non-beneficial manner, the material shall be used beneficially.

(2) If the costs of the beneficial use of dredged material are significantly greater than the costs of disposal in a non-beneficial manner, the material shall be used beneficially unless it is demonstrated that the costs of using the material beneficially are not reasonably proportionate to the costs of the project and benefits that will result. Factors that shall be considered in determining whether the costs of the beneficial use are not reasonably proportionate to the benefits include, but are not limited to:

(A) environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits;

(B) the proximity of the beneficial use site to the dredge site; and

(C) the quantity and quality of the dredged material and its suitability for beneficial use.

(3) Examples of the beneficial use of dredged material include, but are not limited to:

(A) projects designed to reduce or minimize erosion or provide shoreline protection;

(B) projects designed to create or enhance public beaches or recreational areas;

(C) projects designed to benefit the sediment budget or littoral system;

(D) projects designed to improve or maintain terrestrial or aquatic wildlife habitat;

(E) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;

(F) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;

(G) projects designed to create wildlife management areas, parks, airports, or other public facilities;

(H) projects designed to cap landfills or other waste disposal areas;

(I) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available; and

(J) projects designed to remediate past adverse impacts on the coastal zone.

(e) If dredged material cannot be used beneficially as provided in subsection (d)(2) of this section, to avoid and otherwise minimize adverse effects as required in subsection (a) of this section, preference will be given to the greatest extent practicable to disposal in:

(1) contained upland sites;

(2) other contained sites; and

(3) open water areas of relatively low productivity or low biological value.

(f) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of submerged lands or at such location so as to slump or migrate across the boundaries of submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.

(g) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule when:

(1) there is an unacceptable hazard to life or navigation;

(2) there is an immediate threat of significant loss of property; or

(3) an immediate and unforeseen significant economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The council secretary shall be notified at least 24 hours prior to commencement of any emergency dredging operation by the agency or entity responding to the emergency. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations the project sponsor or permit-issuing agency shall, if possible, make all reasonable efforts to meet with council's designated representatives to ensure consideration of and consistency with applicable policies in this subchapter. Compliance with all applicable policies in this subchapter shall be required at the earliest possible date. The permit-issuing agency and the applicant shall submit a consistency determination within 60 days after the emergency operation is complete.

(h) Mining of sand, shell, marl, gravel, and mudshell on submerged lands shall be prohibited unless there is an affirmative showing of no significant impact on erosion within the coastal zone and no significant adverse effect on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA.

(i) The GLO and the SLB shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33, and 51 - 53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. TxDOT shall comply with the policies in this subchapter when adopting rules and taking actions as local sponsor of the Gulf Intracoastal Waterway under Texas Civil Statutes, Article 5415e-2. The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing dredging or the discharge or placement of dredged material. The TPWD shall comply with the policies in this section when adopting rules at Chapter 57 of this title (relating to Fisheries) governing dredging and dredged material disposal and placement. The TPWD shall comply with the policies in subsection (h) of this section when adopting rules and issuing permits under Texas Parks and Wildlife Code, Chapter 86, governing the mining of sand, shell, marl, gravel, and mudshell.

§501.26. Policies for Construction in the Beach/Dune System.

(a) Construction in critical dune areas or areas adjacent to or on Gulf beaches shall comply with the following policies:

(1) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited.

(2) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title (relating to Coastal Area Planning) on the sediment budget and critical dune areas are avoided

to the greatest extent practicable. For purposes of this section, practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Cost of the technology or technique shall also be considered. Adverse effects (as defined in Chapter 15 of this title (relating to Coastal Area Planning) that cannot be avoided shall be:

(A) minimized by limiting the degree or magnitude of the activity and its implementation;

(B) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation; and

(C) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line.

(3) Rectification and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation.

(4) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(5) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods. Subdivisions shall not authorize the construction of a new erosion response structure within the beach/dune system, except as provided by subsection (b) of this section or a retaining wall located more than 200 feet landward of the line of vegetation. Subdivisions shall not authorize the enlargement, improvement, repair or maintenance of existing erosion response structures on the public beach. Subdivisions shall not authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation except as provided in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(b) Construction of structural shore protection projects, including geotextile shore protection projects, in critical dune areas or areas adjacent to or on Gulf Beaches shall comply with the following policies:

(1) The size and the length of a shore protection project shall be determined as part of a site-specific construction and maintenance plan, taking into account both technical requirements and policy issues as described under this subsection, and shall be limited to the minimum size necessary to fulfill the project's goals and purposes.

(2) A shore protection project shall only be used to protect community developments, public infrastructure, and for other lawful public purposes and shall not be used solely to protect individual structures or properties. A community development may include a neighborhood or aggregation of residences or commercial structures.

(3) A shore protection project located parallel to the shore shall be located landward of the boundary of state-owned submerged land as determined by a coastal boundary survey conducted in accordance with Texas Natural Resources Code §33.136, and shall avoid and otherwise minimize adverse effects to dunes and dune vegetation.

(4) To maximize the protection offered by a shore protection project, to enhance the survivability of the project, and to minimize adverse effects to natural resources, a shore protection project shall be located according to the following preferred order:

(A) In an area where a foredune ridge is present, where practicable, a shore protection project shall be located landward of the foredune ridge;

(B) Where there is no foredune ridge, a project shall be located landward of the line of vegetation, where practicable;

(C) Where it is not practicable to locate a shore protection project landward of the line of vegetation, a project shall be located at the line of vegetation; or

(D) Where there is no other practicable location, a shore protection project shall be located at the most landward point of the public beach provided that the project sponsor has provided financial assurance that the pre-project beach width will be maintained through beach nourishment.

(5) A shore protection project shall not be located in a sea turtle nesting area or in any other location where the project will adversely affect an endangered species.

(6) Shore protection projects shall not be constructed on stable or accreting beaches.

(7) A shore protection project shall be designed to avoid and otherwise minimize any adverse effects to adjacent beaches or properties at either end of a project.

(8) To the extent allowed by law, a dune protection permit is required to authorize the construction of a shore protection project in the beach/dune system.

(9) A mitigation plan shall be submitted for any adverse effects to critical dune areas as a result of the construction and presence of a shore protection project.

(10) Public input shall be incorporated into a local government's review and approval of a shore protection project. Methods to obtain public input include public meetings, notices by mail to affected property owners, publication of notices in local newspapers, the *Texas Register*, and web sites.

(11) The success criteria for a shore protection project shall be developed by a project sponsor with consideration for the health and maintenance of the beach/dune system.

(12) The sponsor of a shore protection project shall be responsible for the ongoing maintenance of the project and, if necessary, beach nourishment and/or removal of the project.

(13) Sand from the beach/dune system shall not be used to fill or cover a shore protection project. Where appropriate, a shore protection project shall remain covered with sand and dune vegetation with a preference for natural dune vegetation. The sand and vegetation used to cover a shore protection project shall conform to the standards for dune restoration projects as described in §15.4 of this title (relating to Dune Protection Standards) and §15.7 of this title (relating to Local Government Management of the Public Beach).

(14) Long-term monitoring of a shore protection project shall be required to determine the project's effect on the beach/dune system and the project's effectiveness. Prior to the construction of a shore protection project, a project sponsor shall collect scientifically valid baseline data for monitoring the line of vegetation, the extent of the dry beach, a beach profile, and any other characteristics necessary for evaluating the project's effectiveness.

(15) Existing public access in the area of a shore protection project shall be replicated if not enhanced. A local government shall not impair or close an existing public access point or close a public beach to pedestrian or vehicular traffic without prior approval of the GLO as

required under the Open Beaches Act, Texas Natural Resources Code Annotated, Chapter 61, and the Beach/Dune rules, Chapter 15 of this title.

(c) The GLO shall comply with the policies in this section when certifying local government dune protection and beach access plans and adopting rules under the Texas Natural Resources Code, Chapters 61 and 63. Local governments required by the Texas Natural Resources Code, Chapters 61 and 63, and Chapter 15 of this title to adopt dune protection and beach access plans shall comply with the applicable policies in this section when issuing beachfront construction certificates and dune protection permits.

§501.27. Policies for Development in Coastal Hazard Areas.

(a) Subdivisions participating in the National Flood Insurance Program shall adopt ordinances or orders governing development in special hazard areas under Texas Water Code, Chapter 16, Subchapter I, and Texas Local Government Code, Chapter 240, Subchapter Z, that comply with construction standards in regulations at Code of Federal Regulations, Title 44, Parts 59 - 60, adopted pursuant to the National Flood Insurance Act, 42 United States Code Annotated, §§4001 et seq.

(b) Pursuant to the standards and procedures under the Texas Natural Resources Code, Chapter 33, Subchapter H, the GLO shall adopt or issue rules, recommendations, standards, and guidelines for erosion avoidance and remediation and for prioritizing critical erosion areas.

§501.28. Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers.

(a) Development of new infrastructure or major repair of existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), shall comply with the policies in this section.

(1) Development of publicly funded infrastructure shall be authorized only if it is essential for public health, safety, and welfare, enhances public use, or is required by law.

(2) Infrastructure shall be located at sites at which reasonably foreseeable future expansion will not require development in critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(3) Infrastructure shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects on critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas from:

(A) construction and maintenance of roads, bridges, and causeways; and

(B) direct release to coastal waters, critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas of oil, hazardous substances, or stormwater runoff.

(4) Where practicable, infrastructure shall be located in existing rights-of-way or previously disturbed areas to avoid or minimize adverse effects within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(5) Development of infrastructure shall occur at sites and times selected to have the least adverse effects practicable within Coastal Barrier Resource System Units or Otherwise Protected Areas on critical areas, critical dunes, Gulf beaches, and washover areas and on spawning or nesting areas or seasonal migrations of commercial, recreational, threatened, or endangered terrestrial or aquatic wildlife.

(b) TCEQ rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts under Texas Water Code, Chapter 50; water control and improvement districts under Texas Water Code, Chapter 50; municipal utility districts under Texas Water Code, Chapter 54; regional plan implementation agencies under Texas Water Code, Chapter 54; special utility districts under Texas Water Code, Chapter 65; stormwater control districts under Texas Water Code, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the TCEQ, shall comply with the policies in this section. TxDOT rules and approvals under Texas Civil Statutes, Article 6663 et seq, governing planning, design, construction, and maintenance of transportation projects, shall comply with the policies in this section.

§501.29. Policies for Development in State Parks, Wildlife Management Areas or Preserves.

Development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in such areas shall comply with Texas Parks and Wildlife Code, Chapter 26.

§501.30. Policies for Alteration of Coastal Historic Areas.

(a) Development affecting a coastal historic area shall avoid and otherwise minimize alteration or disturbance of the site unless the site's excavation will promote historical, archaeological, educational, or scientific understanding.

(b) The THC shall comply with the policies in this section when adopting rules and issuing permits under the Texas Natural Resources Code, Chapter 191, governing alteration of coastal historic areas. The THC shall comply with the policies in this section when issuing reviews under the National Historic Preservation Act, §106 (16 United States Code Annotated, §470f), and the regulations enacted pursuant thereto, Code of Federal Regulations, Title 36, Chapter 1, Part 63.

§501.31. Policies for Transportation Projects.

(a) Transportation construction projects and maintenance programs within the coastal zone shall comply with the policies in this section.

(1) Pollution prevention procedures shall be incorporated into the construction and maintenance of transportation projects to minimize pollutant loading to coastal waters from erosion and sedimentation, use of pesticides and herbicides for maintenance of rights-of-way, and other pollutants from stormwater runoff.

(2) Transportation projects shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects from construction and maintenance of additional roads, bridges, causeways, and other development associated with the project; and direct release to CNRAs of pollutants from oil or hazardous substance spills, contaminated sediments or stormwater runoff.

(3) Where practicable, transportation projects shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects.

(4) Where practicable, transportation projects shall be located at sites at which future expansion will not require development in coastal wetlands except where such construction is determined to be essential for evacuation in the case of a natural disaster.

(5) Construction and maintenance of transportation projects shall avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects

to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of §501.23 of this title.

(6) Construction of transportation projects shall occur at sites and times selected to have the least adverse effects practicable on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial or aquatic species.

(7) Beach-quality sand from maintenance of roadways adjacent to Gulf beaches shall be beneficially used by placement on Gulf beaches where practicable. Where placement on Gulf beaches is not practicable, the material shall be placed in critical dune areas.

(b) TxDOT rules and project approvals under Texas Civil Statutes, Article 6663b and 6663c, and Texas Civil Statutes, Article 6674a et seq, governing transportation projects within the coastal zone, shall comply with the policies in this section.

§501.32. Policies for Emission of Air Pollutants.

TCEQ rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, shall comply with regulations at Code of Federal Regulations, Title 40, adopted pursuant to the Clean Air Act, 42 United States Code Annotated, §§7401, et seq, to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare.

§501.33. Policies for Appropriations of Water.

(a) Impoundments and diversion of state water within 200 stream miles of the coast, to commence from the mouth of the river thence inland, shall comply with the policies in this section.

(1) The TCEQ shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(A) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(B) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(C) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(D) the conservation and development of its forest, water, and hydroelectric power;

(E) the navigation of the state's inland and coastal waters; and

(F) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

(2) In this section, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(3) In its consideration of an application for a permit to store, take, or divert water, the TCEQ shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the TCEQ shall include in the permit, to the greatest extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(4) For the purposes of making a determination under paragraph (3) of this subsection, the TCEQ shall consider among other factors:

(A) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in and other studies considered by the TCEQ to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(B) the ecology and productivity of the affected bay and estuary system;

(C) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary;

(D) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(E) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(F) for the purposes of this section, the declarations as to preferences for competing uses of water as found in Texas Water Code, §11.024 and §11.033, as well as the public policy statement in paragraph (1) of this subsection.

(5) In its consideration of an application to store, take, or divert water, the TCEQ shall consider the effect, if any, of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies. The TCEQ shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(6) On receipt of an application for a permit to store, take, or divert water, the TCEQ shall send a copy of the permit application and any subsequent amendments to the TPWD. In making a final decision on any application for a permit, the TCEQ, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, or testimony presented by the TPWD and the TWDB.

(7) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the TCEQ if the TCEQ finds that an emergency exists and cannot practically be resolved in other ways. Before the TCEQ suspends a permit under this paragraph, it must give written notice to the TPWD of the proposed suspension. The TCEQ shall give the TPWD an opportunity to submit comments on the proposed suspension within 72 hours from such time and the TCEQ shall consider those comments before issuing its order imposing the suspension.

(8) In its consideration of an application for a permit under this section, the TCEQ shall assess the effects, if any, of the issuance of the permit on water quality in coastal waters. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse effects on such habitat. In determining whether to require an applicant to mitigate adverse effects on a habitat, the TCEQ may consider any net benefit to habitat produced by the project. The TCEQ shall offset against any mitigation required by the United States Fish and Wildlife

Service pursuant to Code of Federal Regulations, Title 33, §§320 - 330, any mitigation authorized by this subchapter.

(9) Unappropriated water and other water of the state stored in any facility acquired by and under the control of the TWDB may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or other calamity, if the TCEQ first determines the existence of the emergency and requests the TWDB to release the water.

(10) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation within 200 river miles of the coast, to commence from the mouth of the river thence inland, is appropriated to the TPWD for use to make releases to bays and estuaries and for instream uses, and the TCEQ shall issue permits for this water to the TPWD under procedures adopted by the TCEQ. This paragraph applies only to reservoirs and associated works on which construction begins on or after September 1, 1985. This section does not limit or repeal any other authority of or law relating to the TPWD or the TCEQ.

(11) The TWDB, in coordination with the TCEQ and TPWD, shall identify ways to assist in providing flows to meet instream needs, including protection of water quality, protection of terrestrial or aquatic wildlife habitat, and bay and estuary inflow needs, in the implementation of the Texas Water Bank, Texas Water Code, Chapter 15, Subchapter K. This may include, but not be limited to, the purchase by the TPWD and/or the TWDB of water rights deposited in the Texas Water Bank in order to provide for existing instream uses and beneficial inflows to bays and estuaries if funds are available and such purchase is not prohibited by law. The TCEQ shall facilitate the approval of any necessary permit amendments to achieve this purpose.

(12) An applicant for a new or amended water right permit shall submit a water conservation plan in accordance with 30 TAC §295.9 (relating to Conservation Plan). The TCEQ shall consider the information contained in the conservation plan in determining whether any feasible alternative to the proposed appropriation exists, whether the proposed amount to be appropriated as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the TCEQ may deny or grant, in whole or in part, the requested appropriation.

(b) The TCEQ rules and authorizations under Texas Water Code, Chapter 11, governing review and action on applications for new permits or amendments proposing changes to existing permits for diversions or impoundments of state water within 200 stream miles of the coast, and TCEQ rules and approvals governing creation of districts and issuance of district bonds for levee and flood control projects within the coastal zone, shall comply with the policies in this section.

§501.34. Policies for Levee and Flood Control Projects.

(a) Drainage, reclamation, channelization, levee construction or modification, or flood- or floodwater-control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements in §501.23 of this title.

(b) TCEQ rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, pursuant to the Texas Water Code, §16.236, shall comply with the policies in 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.

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Larry L. Laine
Chief Clerk, General Land Office
Coastal Coordination Council
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For further information, please call: (512) 305-8598

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CHAPTER 504. COASTAL MANAGEMENT PROGRAM

SUBCHAPTER B. SMALL BUSINESS PERMITTING ASSISTANCE

31 TAC §504.10

The Texas Coastal Coordination Council (Council) proposes to amend §504.10, relating to Scope of the Permitting Assistance Program.

The Council proposes to amend §504.10(c)(6) to reflect the name change of the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ). The 78th Texas Legislature changed the name of the TNRCC to the TCEQ, effective September 1, 2003.

Bill Peacock, Deputy Commissioner for the Texas General Land Office's Coastal Resources Division, has determined that for each year of the first five years the amended section as proposed is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section as the amendments relate solely to the operations of the Coastal Management Program.

There will be no economic cost to persons required to comply with the regulations, as the amendments apply only to internal operations of the Council. The public will benefit from the proposed amendments because there will be greater clarity and certainty in the Council's procedures for consistency review. The Council has determined that there will be no effect on small businesses, and that a local employment impact statement on the proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The

proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

The Council has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The Council has determined the proposal does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Council has determined that the proposal would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the amendments being proposed.

Comments may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873; facsimile number (512) 463-6311; e-mail address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 days after the proposed amendments are published.

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; §33.205, which authorizes the Council to adopt rules establishing processes for preliminary consistency review and small business assistance; and §33.206(d), which authorizes the Council to adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate provisions of federal regulations governing those reviews.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, 33.204, 33.205, and 33.206 are affected by this proposed rulemaking.

§504.10. Scope of the Permitting Assistance Program.

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

(c) Appendix A. Individual Agency or Subdivision Actions and Equivalent Federal Actions

(1) - (5) (No change.)

(6) The Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~] shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing or approving:

(A) - (J) (No change.)

(7) - (11) (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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CHAPTER 505. COUNCIL PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

SUBCHAPTER A. PURPOSE AND POLICY AND STATE AGENCY ACTIONS SUBJECT TO THE COASTAL MANAGEMENT PROGRAM

31 TAC §505.11

The Council proposes to amend §505.11, relating to Actions and Rules Subject to the Coastal Management Program.

The Council proposes to amend §505.11(a)(6), (b)(2), and (d)(2) to reflect the name change of the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ). The 78th Texas Legislature changed the name of the TNRCC to the TCEQ, effective September 1, 2003.

Bill Peacock, Deputy Commissioner for the Texas General Land Office's Coastal Resources Division, has determined that for each year of the first five years the amended section as proposed is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended section as the amendments relate solely to the operations of the Coastal Management Program.

There will be no economic cost to persons required to comply with these regulations, as these amendments apply only to internal operations of the Council. The public will benefit from the proposed amendments because there will be greater clarity and certainty in the Council's procedures for consistency review. The Council has determined that there will be no effect on small businesses, and that a local employment impact statement on the proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is

required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

The Council has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The Council has determined the proposal does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Council has determined that the proposal would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the amendments being proposed.

Comments may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873; facsimile number (512) 463-6311; e-mail address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 days after the proposed amendments are published.

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; §33.205, which authorizes the Council to adopt rules establishing processes for preliminary consistency review and small business assistance; and §33.206(d), which authorizes the Council to adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate provisions of federal regulations governing those reviews.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, 33.204, 33.205, and 33.206 are affected by this proposed rulemaking.

§505.11. Actions and Rules Subject to the Coastal Management Program.

(a) For purposes of this chapter and Chapter 501 of this title (relating to Coastal Management Program), the following is an exclusive list of proposed individual agency actions that may adversely affect a coastal natural resource area (CNRA) and that therefore must be consistent with the CMP goals and policies:

(1) - (5) (No change.)

(6) for the Texas Commission on Environmental Quality (TCEQ) [~~Natural Resource Conservation Commission (TNRCC)~~] when issuing or approving:

(A) - (J) (No change.)

(7) (No change.)

(b) For purposes of this chapter and Chapter 501 of this title (relating to the Coastal Management Program), the following is an exclusive list of proposed agency rulemaking actions that must be consistent with the CMP goals and policies:

(1) (No change.)

(2) TCEQ [~~TNRCC~~] rules governing air pollutant emissions, on-site sewage disposal systems, or underground storage tanks;

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

(c) (No change.)

(d) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval or other action is not an action under this section if the action is taken pursuant to rules that the council has certified as consistent under Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) and:

(1) (No change.)

(2) for solid and hazardous waste permits, if the action is not a Class III modification as defined in TCEQ [~~TNRCC~~] rules; or

(3) (No change.)

(e) (No change.)

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

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CHAPTER 506. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND PRIORITIES

31 TAC §§506.10, 506.13, 506.20, 506.27, 506.45

The Council proposes new §506.10, relating to Purpose and Policy, and amendments to §506.13, relating to Conditional Concurrence, §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, §506.27, relating to Council Hearing to Review Federal Agency Activities and Availability of Mediation, and §506.45, relating to Failure to Comply Substantially with an Approved OCS Plan.

The Council proposes new §506.10, relating to Purpose and Policy to recognize federal regulations as the controlling authority should a conflict arise between the Council's rules and federal regulations. Because the National Oceanic and Atmospheric Administration (NOAA) has management authority under the federal Coastal Zone Management Act (CZMA), NOAA's regulations are the controlling authority on federal consistency should a conflict arise.

The Council proposes to amend §506.13(a) to make the section consistent with language in the corresponding federal regulations at 15 CFR §930.4(a). NOAA has indicated that the Council should change its rules to be consistent with federal regulations with regard to federal consistency because the federal regulations control should there be a conflict between the two.

The Council proposes to amend §506.20(c) to change TNRCC to TCEQ and to make the section consistent with federal regulations. The reasoned justification for the proposed change of the word "shall" to "are encouraged to" is that the CZMA does not require coordination between the consistency determinations of the federal trustees and public notice of the consistency determinations for natural resource damage assessment restoration plans.

The Council proposes to amend §506.27(h) to indicate the correct title of the party offering mediation services, consistent with federal regulations.

The Council proposes to amend §506.45(b) and (c) to remove procedures from the Council's rules that are covered under federal regulations, and are not necessary in the Council's rules. The Council's rules retain those procedures that are specific to the Council's duties and procedures, rather than those procedures specific to NOAA's regulations regarding the duties of federal entities under the CZMA.

Bill Peacock, Deputy Commissioner for the Texas General Land Office's Coastal Resources Division, has determined that for each year of the first five years the new and amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the new and amended sections as the proposal relates solely to the operations of the Coastal Management Program.

There will be no economic cost to persons required to comply with the regulations, as the new section and amendments apply only to internal operations of the Council. The public will benefit from the proposal because there will be greater clarity and certainty in the Council's procedures for consistency review. The Council has determined that there will be no effect on small businesses, and that a local employment impact statement on the proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." Under the Government Code, a "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

The Council has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable, and whether a detailed takings impact assessment is required. The Council has determined the proposal does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Council has determined that the proposal would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the new section and amendments being proposed.

Comments may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873; facsimile number (512) 463-6311; e-mail address deborah.cantu@glo.state.tx.us. Comments must be received no later than 5:00 p.m., 30 days after the proposal is published.

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP; §33.055, which requires the Council to hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; §33.205, which authorizes the Council to adopt rules establishing processes for preliminary consistency review and small business assistance; and §33.206(d), which authorizes the Council to adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate provisions of federal regulations governing those reviews.

Texas Natural Resources Code §§33.051, 33.052, 33.053, 33.054, 33.055, 33.204, 33.205, and 33.206 are affected by this proposed rulemaking.

§506.10. Purpose and Policy.

The purpose of this chapter is to describe procedures to ensure that federal actions and activities subject to the Texas Coastal Management Program (CMP) are consistent with the CMP goals and policies. This chapter provides procedures that are intended to allow the council to adequately identify, address, and resolve consistency issues. These rules do not create an obligation on the part of federal agencies independent of the Coastal Zone Management Act and the National Oceanic and

Atmospheric Administration's (NOAA's) regulations at 15 CFR Parts 923 and 930. If there is a conflict between this chapter and NOAA's regulations, then NOAA's regulations, and NOAA's interpretation of the regulations, are the authoritative requirements for federal consistency.

§506.13. Conditional Concurrence.

(a) Federal agencies should [~~shall~~] cooperate with the council to develop conditions that, if agreed to during the council's consistency review period, and included in a federal agency's final decision or approval for activities identified in §506.12 of this title (relating to Federal Agency Actions, Federal Agency Activities, Outer Continental Shelf Plans Subject to the Coastal Management Program), would allow the council to concur with the federal agency's decision. As an alternative to finding a proposed federal agency action, activity, or funding assistance inconsistent with the CMP goals and policies, the council may, by a vote of two-thirds of all members eligible to vote, issue a conditional concurrence letter as described under this section.

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

(b) (No change.)

§506.20. Consistency Determinations for Federal Agency Activities and Development Projects.

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

(c) For natural resource damage assessment restoration plans that are prepared solely by federal natural resource trustee(s), or are the product of a joint cooperative natural resource damage assessment by state and federal trustees, the consistency determination shall be made by the federal trustees and consistency review is delegated to the state trustees (TCEQ [~~TNRCC~~], TPWD, and the GLO). The consistency determinations of the federal trustee(s) and public notice of the determinations are encouraged to [~~shall~~] occur concurrently with the federal trustees' process of complying with the provisions of the National Environmental Policy Act, 42 United States Code Annotated §§4321 - 4370d.

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

§506.27. Council Hearing to Review Federal Agency Activities and Availability of Mediation.

(a) - (g) (No change.)

(h) If, after a reasonable time following a request for remedial action, the council still maintains that a serious disagreement exists, either party may request the mediation services of the Secretary of Commerce [~~the Interior~~] or the Office of Ocean and Coastal Resource Management as provided in Code of Federal Regulations, Title 15, Part 930, Subpart G, §§930.110 et seq.

§506.45. Failure to Comply Substantially with an Approved OCS Plan.

(a) (No change.)

(b) If the council claims that a person is failing to comply substantially with an approved OCS plan subject to the requirements of the Code of Federal Regulations, Title 15, Part 930, Subpart E, §§930.70 - 930.85, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the CMP, the council shall transmit its claim to the Minerals Management Service. Such claim shall include: a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person [~~and the Director~~].

(c) [~~If, after 30 days following a request for remedial action, the council still maintains that the person is failing to comply substantially with the OCS plan, the council may file a written objection with the Director.~~] If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the council. Following such a finding by the Director, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. The requirements of the Code of Federal Regulations, Title 15, Part 930, Subpart E, §930.82 (relating to Amended OCS Plans), §930.83 (relating to Review of Amended OCS Plans), and §930.84 (relating to Continuing State Agency Objections) shall apply to further council review of the consistency certification for the amended or new OCS plan.

(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 July 7, 2004.

TRD-200404412
Larry L. Laine
Chief Clerk, General Land Office
Coastal Coordination Council
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 305-8598

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, 87.21, 87.25, 87.31, 87.33, 87.34

The Employees Retirement System of Texas (ERS) proposes amendments to §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, 87.21, 87.25, 87.31, 87.33 and 87.34 concerning the Deferred Compensation Plan. Section 87.1 revises certain definitions due to changes in federal regulations affecting the plan. In addition, changes were made to clarify the definition and use of the terms "revised plan," "revised plan vendor," "prior plan," and "prior plan vendor." The definition of investment provider has been added to represent revised and prior plan investments. The definition of investment product has been updated to include the stable value account and the self-directed brokerage account. Throughout §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, 87.21, 87.25, 87.31, and 87.33 the terms "vendor" and "qualified vendor" are being deleted and the terms "prior plan vendor" and "revised plan vendor" are being added where appropriate. Sections 87.3 and 87.5 changes adjust the annual deferral limit to $13,000 for 2004, per federal law. Section 87.5(b) changes clarify enrollment in the plan and the default investment selection. Sections 87.5(g) and 87.33 changes adjust the over age 50 catch-up limits to $3,000 for 2004, per federal law. Section 87.5(m)(2) changes clarify the resumption of deferrals after a separation from service. Sections 87.7(b) and 87.7(c)(5) are being eliminated because no new vendors are accepted in the prior plan. Section 87.7(l) is changed to clarify the audits of

prior plan and revised plan vendors. Section 87.9(c) is changed to clarify that the stable value account and the self-directed brokerage account are in the list of investment products the Board has chosen to be eligible for investment under the Plan. Section 87.11 is changed to substitute "investment provider or TPA" for "prior or revised plan vendor " for clarification. Sections 87.11(d) and (e) regarding solicitation are eliminated from the prior plan. Section 87.13(a) is changed to require all prior plan vendors to complete the annual disclosure requested by ERS on each product held by plan participants. Section 87.13(c) is changed to clarify the requirement that prior plan vendors disclose any fees or penalties and their scheduled expiration date. Section 87.15(d) is changed to allow a post-severance plan-to-plan transfer to another eligible governmental plan, per federal law. Sections 87.15(e) (A)-(F) are eliminated. Section 87.17(u) removes the option to annuitize prior plan investment products on or after October 1, 2004. Section 87.19(d) is changed to provide that prior plan vendors must remit any fees assessed by the plan administrator on a quarterly basis with their regular quarterly report in order to pay for administrative cost of the plan. Section 87.21 is changed to clarify the plan administrator's ability to terminate, suspend or expel vendors to ensure compliance with Board Rules. Section 87.31(c) is added to require a revised plan vendor to notify the plan administrator of a name change and/or change in legal status. Section 87.31(m) is added to give the plan administrator the right to audit the revised plan vendors. Section 87.33(g) is changed to clarify the purchase of service credit within the same state or another state. Section 87.34(b) is added to allow for payment of independent investment advice from the revised plan only.

The above changes are required to update the plan rules, to clarify plan requirements, and to comport with federal law and administrative requirements.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be added flexibility for and protection of State of Texas Deferred Compensation Plan participants. There are no known or anticipated economic costs to persons who are required to comply with the rules as proposed, with the exception of fees connected with investment advice available to plan participants.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at pjones@ers.state.tx.us. The deadline for receiving comments is August 23, 2004, at 10:00 a.m.

The amendments are proposed under Government Code, Section 609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

No other statutes are affected by these proposed amendments.

§87.1. Definitions.

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

(1) Account--A record that a prior plan vendor or revised plan vendor [~~qualified vendor~~] uses to account for deferrals and investment income on a participant-by-participant basis.

(2) Agency coordinator--An employee of a state agency who has been designated by the agency to perform certain administrative functions with respect to the plan.

(3) Basic pension plan--The retirement program in which an employee must participate.

(4) Beneficiary designation form--A form authorized and approved by the plan administrator to designate a participant's beneficiary.

(5) Board of Trustees--The Board of Trustees of the Employees Retirement System of Texas.

(6) Call-in day--The first five working days of the month.

(7) Change agreement--A contract signed by a participant to request certain changes concerning the participant's deferrals, investment income, and participation in the plan.

(8) Data collection center--A private entity used by the State Treasury Department to collect information from state depositories regarding deposits of state funds.

(9) Day--A calendar day.

(10) DCP--Deferred compensation plan.

(11) Deferral--The amount of compensation [~~the receipt of which~~] a participant has agreed to defer under the plan.

(12) Distribution agreement--A contract signed by a participant or beneficiary indicating the disposition of the participant's deferrals and investment income.

(13) Disclosure form--A document completed by a prior plan vendor's [~~vendor~~] representative and signed by [~~both~~] the vendor representative [~~and an employee~~] disclosing the rate of return, fees, withdrawal penalties, and payout options for the qualified investment product selected.

(14) Emergency withdrawal application--A form completed by a participant requesting the full or partial distribution of the participant's deferrals and investment income because of a [~~sudden and~~] unforeseeable emergency.

(15) Employee--A person who provides services as an officer or employee to a state agency.

(16) Executive director--The executive director of the Employees Retirement System of Texas.

(17) FDIC--The Federal Deposit Insurance Corporation or its successor in function. The FDIC consists of two funds, the Savings Association Insurance Fund (SAIF), which insured savings associations and savings banks, and the Bank Insurance Fund (BIF), which insures commercial banks.

(18) Fee--The term includes a fee, penalty, charge, assessment, market value adjustment, forfeiture, or service charge.

(19) Gross income--The total of:

(A) the [~~present~~] value of salary or wages;

(B) plus the [~~present~~] value of longevity pay, hazardous duty pay, imputed income, special duty pay, sick, vacation, back pay and benefit replacement pay; and

(C) minus the present value of contributions to the Employees Retirement System, the Teacher Retirement System, the Optional Retirement Program, and the TexFlex program administered by the Employees Retirement System.

(20) Home office--The primary location at which a prior plan vendor [~~qualified vendor~~] maintains its files and other records concerning the vendor's participation in the plan and the participants whose deferrals and investment income have been invested in the vendor's qualified investment products. The term is usually equivalent to the vendor's headquarters.

(21) Inactive prior plan [~~qualified~~] vendor--A prior plan [~~qualified~~] vendor is an inactive prior plan [~~qualified~~] vendor if no new deferrals have been invested in any of the vendor's qualified investment products for 12 consecutive months.

(22) Includes--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(23) Includible compensation--Compensation from a state agency that is includible in a participant's gross income under the Internal Revenue Code of 1986 as amended, the Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA"), [~~and~~] the Job Creation and Worker Assistance Act of 2002 , and the final IRC §457 regulations. [~~The term excludes deferrals.~~]

(24) Investment income--The interest, capital gains, and other income earned through the investment of deferrals in qualified investment products.

(25) Investment product--The term includes a life insurance product, fixed or variable rate annuity, stable value account, mutual fund, certificate of deposit, money market account, self-directed brokerage account, or passbook savings account. An [~~A vendor's~~] investment product that is in any respect different from another investment product of the same vendor is a different investment product.

(26) Investment provider--a prior plan vendor or revised plan vendor that offers an investment product in the plan.

(27) [~~(26)~~] NCUA--National Credit Union Administration, a United States Government Agency, which regulates, charters and insures deposits of the nation's federal credit unions. Shares and deposits in credit unions are insured by the NCUSIF as detailed in this section.

(28) [~~(27)~~] NCUSIF--National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(29) [~~(28)~~] Non-filer--A prior plan [~~qualified~~] vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to reporting [~~Reporting~~] and recordkeeping [~~Recordkeeping~~] by prior plan vendors [~~Qualified Vendors~~]).

(30) [~~(29)~~] Non-spousal beneficiary--Any beneficiary other than a spouse or ex-spouse.

(31) [~~(30)~~] One-time election form--A form completed by a participant requesting the full distribution of deferred compensation funds with a total balance that does not exceed the dollar limit under Internal Revenue Code of 1986 as amended, §457(e)(9) and EGTRRA, as of the date of the election.

(32) [~~(31)~~] Participant--A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation or has a balance in the plan.[~~in a qualified investment product.~~]

(33) [~~(32)~~] Participation agreement--A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding prior plan vendors, [~~qualified~~] investment products, and other matters.

(34) [~~(33)~~] Plan--The deferred compensation program of the State of Texas that is governed by the Internal Revenue Code of 1986 as amended, §457 and EGTRRA, and authorized by Chapter 609, Government Code. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(35) [~~(34)~~] Plan administrator--The Board of Trustees of the Employees Retirement System of Texas or its designee.

(36) Prior plan--Refers to the State of Texas 457 Deferred Compensation Plan, the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas prior to September 1, 2000.

(37) Prior plan vendor--A vendor in the prior plan with whom the plan administrator has signed a vendor contract. The term includes a prior plan vendor's officers and employees. The prior plan vendor may be an insurance company, bank, savings and loan, credit union, or mutual fund. The term applies only to vendors approved and implemented by the Board of Trustees before January 1, 2000.

(38) [~~(35)~~] Product approval notice--A written notice from the plan administrator to a prior plan vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(39) [~~(36)~~] Product contract--A contract between an investment provider [~~a qualified vendor~~] and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(40) [~~(37)~~] Product type--A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts, share accounts, stable value account, self-directed brokerage account, and annuities.

(41) [~~(38)~~] Qualified investment product--An investment product concerning which the plan administrator and the sponsoring prior plan or revised plan [~~qualified~~] vendor have signed a product contract.

[~~(39) Qualified vendor--A vendor with whom the plan administrator has signed a vendor contract. The term includes a qualified vendor's officers and employees.~~]

(42) Revised plan--Refers to the State of Texas 457 Deferred Compensation Plan and the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas after August 31, 2000 for the Texa$aver program. The term "Texa$aver program" is used as it is defined in Texas Government Code Section 609.502.

(43) Revised plan vendor-- An insurance company, brokerage firm, or mutual fund distributor that sells investment products in the revised plan. The term includes a vendor's officers and/or employees. This applies only to vendors approved and implemented by the Board of Trustees subsequent to December 31, 1999.

(44) [~~(40)~~] Separation from service--A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(45) [~~(41)~~] Spousal beneficiary--The current or ex-spouse of a participant who is designated to receive a participant's account balance.

(46) [~~(42)~~] State agency--A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by the Education Code, §61.003, other than a public junior college.

(47) [~~(43)~~] [~~TPA --~~] Third Party Administrator (TPA)--An entity under the direction of the Plan Administrator that operates independently of both the employer and investment providers to perform agreed upon administrative services to a tax-deferred defined contribution plan. These tasks may include recordkeeping, preparation of participant statements, monitoring deferral limits, and other specified services.

(48) [~~(44)~~] Transfer--The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(49) [~~(45)~~] Trust--The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(50) [~~(46)~~] Trustee--The Board of Trustees of the Employees Retirement System of Texas.

~~[(47) Vendor--An insurance company, bank, savings and loan association, credit union, or mutual fund distributor that sells investment products. The term includes a vendor's officers and/or employees.]~~

(51) [~~(48)~~] Vendor contract--A contract between the plan administrator and an investment provider [~~a vendor~~] concerning the vendor's participation in the plan.

(52) [~~(49)~~] Vendor representative--An agent, independent agent, independent contractor, or other representative of a prior plan [~~vendor~~] who is not an employee or officer of the vendor.

(53) [~~(50)~~] 401(a)(9), §401(a)(9) and Section 401(a)(9)--These terms refer to Internal Revenue Code § [~~Section~~] 401(a)(9).

(54) [~~(51)~~] 457, §457 and Section 457--These terms refer to Internal Revenue Code § [~~Section~~] 457.

§87.3. Administrative and Miscellaneous Provisions.

(a) Plan administrator.

(1) The plan administrator shall administer all aspects of the plan.

(2) The plan administrator shall:

(A) act for the state in all administrative matters concerning the plan;

(B) adopt and amend rules that are consistent with state and federal law;

(C) enter into necessary contracts; and

(D) take whatever action is necessary to ensure compliance with state and federal law and the sections in this chapter.

(b) Participation by state agencies in the plan.

(1) Commencing participation in the plan.

(A) A state agency may commence participation in the plan by:

(i) sending a written notice from its head of agency to the plan administrator; and

(ii) complying with the plan administrator's documentary, training, and other requirements for participation in the plan.

(B) The plan administrator may determine the effective date of a state agency's participation in the plan.

(C) If the plan administrator does not determine the effective date in accordance with subparagraph (B) of this paragraph, this subparagraph applies.

(i) If the plan administrator receives the written notice on the first day of a month, then the state agency's participation in the plan is effective on the first pay date of the following month.

(ii) Otherwise, the state agency's participation in the plan is effective on the first pay date of the second month following the month in which the plan administrator receives the notice.

(2) Terminating participation in the plan.

(A) Voluntary termination.

(i) A state agency may terminate its participation in the plan by sending a written notice from its head of agency to the plan administrator.

(ii) If the plan administrator receives the notice on the first day of a month, then the state agency's participation in the plan terminates on the first pay date of the third month following the month in which the plan administrator receives the notice. Otherwise, the state agency's participation in the plan terminates on the first pay date of the fourth month following the month in which the plan administrator receives the notice.

(iii) A state agency's termination of its participation in the plan does not entitle the agency's participants to a distribution of their deferrals and investment income.

(iv) A participant who is employed by a state agency that has terminated its participation in the plan may not make additional deferrals until either the agency resumes participating in the plan or the participant becomes employed by a state agency participating in the plan.

(v) The agency coordinator of a state agency that has terminated its participation in the plan is not relieved from the responsibilities set forth in the sections in this chapter, except to the extent that the agency's participants will not be making additional deferrals to the plan.

(B) Involuntary termination or suspension.

(i) The plan administrator may terminate or suspend a state agency's participation in the plan if the agency or the agency's coordinator violates the sections in this chapter.

(ii) The plan administrator may determine the length of a suspension after considering all relevant circumstances.

(iii) The plan administrator may reinstate a state agency that has been terminated from participation in the plan if the plan administrator determines that the best interests of the plan would be served.

(iv) If the plan administrator terminates or suspends a state agency's participation in the plan, the agency's participants are

not entitled to a distribution of their deferrals and investment income by virtue of the termination or suspension.

(v) The participant of a state agency that the plan administrator has terminated or suspended from participation in the plan may not make additional deferrals until the plan administrator reinstates the agency, the suspension ends, or the participant becomes employed by a state agency participating in the plan.

(vi) The agency administrator of a terminated or suspended state agency is not relieved from the responsibilities set forth in the sections in this chapter, except to the extent that the agency's participants will not be making additional deferrals to the plan.

(3) Agency coordinators. An agency coordinator's responsibilities may include:

(A) maintaining records concerning each participant as required by the plan administrator;

(B) keeping participation agreements on file;

(C) retaining the original copies of insurance policies and annuity contracts;

(D) ensuring that deferrals are properly deducted from a participant's salary and sent to the appropriate entity as directed by the plan administrator [~~qualified vendor~~];

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $13,000 [~~$12,000~~] (as adjusted) or 100% of the participant's gross income is not exceeded;

(F) calculating and monitoring catch-up limits and furnishing the plan administrator with the applicable catch-up forms;

(G) ensuring that all forms and other paperwork are properly completed and forwarded to the appropriate party;

(H) balancing participant records and reconciling those records with the data provided by the prior plan [~~qualified~~] vendors and the plan administrator;

(I) informing employees and participants about the plan, including the necessity to file distribution agreements in accordance with §87.17 of this title (relating to Distributions);

(J) acting as a buffer between employees and participants on the one hand and prior plan [~~qualified~~] vendors on the other, although an agency coordinator is prohibited from providing investment advice;

(K) attempting to locate missing participants and beneficiaries in accordance with §87.17(q) of this title;

(L) assisting a participant who has retired or left state employment if the participant's last position in state government was with that particular agency that employs the agency coordinator;

(M) continuing to assist a participant with all deferred compensation matters if a participant transfers from a participating state agency to a non-participating state agency until the participant returns to a different participating agency;

(N) assisting the beneficiary of a participant whose last position in state government was with that particular state agency that employs the agency coordinator;

(O) notifying the plan administrator when a participant dies or separates from service; and

(P) performing any other duties specified in the sections in this chapter.

(c) Miscellaneous provisions.

(1) The participation in the plan of an investment provider or TPA [~~a qualified vendor~~], qualified investment product, state employee, vendor representative, or employee of a prior or revised plan [~~qualified~~] vendor is subject to changes in federal law, federal regulations, state law, and the sections in this chapter.

(2) The fiscal year of the plan begins on January 1 of each year.

(3) The mailing address of the plan administrator is: Plan Administrator, Deferred Compensation §457 Plan, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207.

(4) If a provision in the sections in this chapter conflicts with a federal law, rule, or regulation governing the plan, then the law, rule, or regulation prevails over the provision.

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, the plan administrator, or the State of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency.

(6) If a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the State of Texas for observance by state employees, the last day of the time period is the first business day after the weekend or holiday.

(7) The sections in this chapter prevail over any document used in the administration of the plan that has provisions or requirements which conflict with the sections.

§87.5. Participation by Employees.

(a) Benefits of participation. The plan administrator shall cease to accept deferrals to investment products approved under the prior [~~previous~~] plan, with exception of life insurance products on or after September 1, 2000. Subject to any changes in federal law:

(1) a participant's deferrals are not subject to federal income taxation until the deferrals are paid or otherwise made available to the participant; and

(2) investment income is not subject to federal income taxation until it is paid or otherwise made available to the participant.

(b) Enrollment of participants in the plan.

(1) An employee may complete a participation agreement, enroll online or enroll through customer service representative at the TPA in the revised plan.

(2) If a participant has not selected an investment product to receive deferrals, the deferrals shall be invested in a product selected by the plan administrator at its sole discretion. [~~An employee may not initiate participation in the plan unless the employee simultaneously chooses a qualified investment product to receive the employee's deferrals.~~]

[~~(3) The plan administrator may not complete any forms provided by a qualified vendor in connection with initial participation.~~]

(c) Effective date of enrollment. A participant's enrollment in the Plan is effective for compensation earned beginning with the month following the month in which the participant enrolls.

(d) Contents of a participation agreement used in the prior plan. A participation agreement must contain but shall not be limited to:

(1) the participant's consent for payroll deductions equal to the amount of deferrals during each pay period;

(2) the amount that will be deducted from the participant's compensation during each pay period;

(3) the prior plan [~~qualified~~] vendor and qualified investment product in which the participant's deferrals will be invested;

(4) the date on which the payroll deductions will begin or end, as appropriate;

(5) the signature of an individual with authority to bind the prior plan [~~qualified~~] vendor;

(6) the signature of an individual with authority to bind the participant; and

(7) an incorporation by reference of the requirements of state law and the sections in this chapter.

(e) Participants with existing life insurance products.

(1) This paragraph is effective until December 31, 1998. When a participant has deferrals and investment income in a life insurance product, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(2) This paragraph is effective January 1, 1999, and thereafter. When a participant has deferrals and investment income in a life insurance product, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(f) Normal maximum amount of deferrals.

(1) The amount a participant defers during each tax year may not exceed the normal maximum amount of deferrals.

(2) The normal maximum amount of deferrals is equal to the lesser of $13,000 [~~$12,000~~] (as periodically adjusted in accordance with Internal Revenue Code §457(e)(15)), EGTRRA and the Job Creation and Worker Assistance Act of 2002, or 100% of a participant's includible compensation.

(3) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $13,000 [~~$12,000~~] (as adjusted) or 100% of a participant's gross income is not exceeded. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken.

(A) Upon notification by the participant's agency, the prior plan vendor or TPA will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of $13,000 [~~$12,000~~] (as adjusted) or 100% of the participant's gross income without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(g) Three-year catch-up exception to the normal maximum amount of deferrals.

(1) This subsection provides a limited exception to the normal maximum amount of deferrals.

(2) In the event that a participant chooses to begin the three-year catch-up option, the participant is required to complete and provide the plan administrator with a copy of the three-year catch-up provision agreement form.

(3) In this subsection, the term "normal retirement age" for any participant means a range of ages:

(A) beginning with the earliest age at which a person may retire under the participant's basic pension plan:

(i) without an actuarial or similar reduction in retirement benefits; and

(ii) without the state's consent for the retirement; and

(B) ending at age 70.5.

(C) A participant who is a police officer or firefighter (defined in Internal Revenue Code §415(b)), may designate a normal retirement age that is earlier than that described above, but in any event may not be earlier than age 40.

(4) If a participant works beyond age 70.5, the normal retirement age for the participant is the age designated by the participant which, in this instance, may not be later than the participant's separation from service.

(5) For any or all of the last three full taxable years ending before the taxable year in which a participant attains normal retirement age, the maximum amount that the participant may defer for each tax year is the lesser of:

(A) twice the annual 457(g) deferral limit as adjusted, or

(B) the sum of the normal maximum amount of deferrals that the participant did not use in prior tax years commencing January 1, 1979, provided the participant was eligible to participate in the plan during those years.

(6) The participant's employing agency will calculate and monitor all three-year catch-up limits and furnish the plan administrator with the applicable three-year catch-up forms. If a participant makes deferrals in excess of the participant's three-year catch-up limit, the following actions will be taken.

(A) Upon notification by the participant's agency, the prior plan vendor or TPA will return to the participant's agency, the amount of deferrals in excess of the three-year catch-up limit without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(7) This subsection applies only if the participant has not previously used the three-year catch-up exception with respect to a different normal retirement age under the plan or another deferred compensation plan governed by the Internal Revenue Code of 1986 as amended, §457 and EGTRRA.

(8) If a participant makes deferrals in excess of the normal plan limits under the three-year catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the prior plan vendor or TPA will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits,

that is, the lesser of $13,000 [~~$12,000~~] (as adjusted in accordance with Internal Revenue Code §457(e)(15) or 100% of a participant's includible compensation) without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's state agency will reimburse the participant through its payroll system.

(9) Over age 50 catch-up. A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with Internal Revenue Code § [~~Section~~] 414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant may make an additional contribution over and above the applicable deferral limit. The additional contribution is $3,000 [~~$2,000~~] for 2004 [~~2003~~], increasing by $1,000 each year up to $5,000 in 2006. After 2006, the amount of the "Over age 50 and over catch-up" will be indexed in $500 increments based upon cost-of-living adjustments. A participant who elects to defer contributions under the normal three-year catch-up provisions may not also defer under the special Over age 50 catch-up and Code [~~code~~] § [~~Section~~] 414(v).

(h) Changes before a participant becomes entitled to a distribution.

(1) A participant may change the amount of deferral at any time.

(2) A participant must execute a change agreement for the prior 457 Plan funds and file the agreement with the participant's agency coordinator when the participant:

(A) initiates a transfer;

(B) changes the participant's primary or secondary beneficiary, or both; or

(C) performs a combination of the items specified in subparagraphs (A) or (B) of this paragraph.

[~~(3) A participant must execute a change agreement and file the agreement directly with the plan administrator when the participant moves deferrals and investment income from a qualified vendor's qualified investment product to another qualified investment product offered by the same vendor.~~]

(3) [~~(4)~~] Upon receipt of a participation agreement or change agreement, an agency coordinator shall review the agreement to determine whether it complies with the sections in this chapter.

(A) With a participant's enrollment, the agency coordinator shall take the action necessary for payroll initiation.

(B) If a change agreement complies, the agency coordinator shall send the agreement to the plan administrator.

(4) [~~(5)~~] This paragraph applies to changes of beneficiaries, changes of the prior plan [~~qualified~~] vendor or qualified investment product that receives a participant's deferrals, and changes to the amount a participant defers per pay period. An executed change agreement or participation agreement is effective beginning with the month following the month in which the agency coordinator receives the agreement from the participant.

(5) [~~(6)~~] This paragraph applies to transfers. An executed change agreement is effective on the date that the transfer procedures specified in §87.15 of this title (relating to Transfers) have been completed.

[~~(7) If a participant changes a primary or secondary beneficiary, or both, on the same change agreement that is used to make another type of change, the change of beneficiary applies only to the qualified investment product:~~]

[~~(A) that receives the transfer; or~~]

[~~(B) that is designated to receive the participant's future deferrals.~~]

(i) Conflict in beneficiary designations. The designation of a primary or secondary beneficiary, or both, in a beneficiary designation form, participation agreement, change agreement, or distribution agreement prevails over a conflicting designation in any other document.

(j) A beneficiary designation that names a former spouse is invalid unless the designation is completed after the date of divorce and received by the plan administrator.

(k) Paid leave of absence. Deferrals may continue during a participant's paid leave of absence.

(l) Unpaid leave of absence. If a Participant separates from service or takes a leave of absence from the State because of service in the military and does not receive a distribution of his/her account balances, the Plans will allow suspension of loan repayments until after the conclusion of the period of military service.

(m) Termination and resumption of deferrals.

(1) An employee may voluntarily terminate additional deferrals to the prior plan by completing a participation agreement or by contacting his or her agency coordinator.

(2) An employee who returns to active service after a separation from service must enroll in the revised plan before deferrals may resume. [~~execute a new participation agreement before deferrals may resume. Deferrals after a resumption of service may not be made to the same account that received the deferrals before the separation from service occurred.~~]

(n) Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Government Code and Internal Revenue Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Internal Revenue Code §457(g), §401(f) and EGTRRA. In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the State of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. Adoption of this rule shall constitute notice to prior plan vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(o) Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant

if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of an investment provider [~~a qualified vendor~~]; or

(C) the plan administrator's initiation of a transfer or investment of deferrals in accordance with the sections in this chapter.

(2) A participant is solely responsible for monitoring his or her own investments and being knowledgeable about:

(A) the financial status and stability of the investment provider [~~qualified vendor~~] in which the participant's deferrals and investment income are invested;

(B) market conditions;

(C) the resulting cost of making a transfer or distribution from a qualified investment product;

(D) the amount of the participant's deferrals and investment income that are invested in an investment provider's [~~a qualified vendor's~~] qualified investment products;

(E) the riskiness of a qualified investment product; and

(F) the federal tax advantages and consequences of participating in the plan and receiving distributions of deferrals and investment income.

(p) Alienation of deferrals and investment income. A participant's deferrals and investment income may not be:

(1) assigned or conveyed;

(2) pledged as collateral or other security for a loan;

(3) attached, garnished, or subjected to execution; or

(4) conveyed by operation of law in the event of the participant's bankruptcy, or insolvency.

§87.7. Prior Plan Vendor Participation.

(a) Prohibited activities. A prior plan vendor may not solicit business from employees or participants or otherwise participate in the plan until the prior plan vendor and the plan administrator have signed a vendor contract.No applications have been or will be accepted by the plan administrator for new prior plan vendors since January 1, 2000. For purposes of this Chapter, any language referring to prior plan vendor qualifications, eligibility or participation requirements remains necessary in order for the plan administrator to continue to assess whether the prior plan vendor remains an eligible vendor.

~~[(b) New qualified vendors.]~~

~~[(1) Notwithstanding anything to the contrary in the sections in this chapter, other than §87.31 and paragraph (2) of this subsection, the plan administrator may not:]~~

~~[(A) approve a vendor as a qualified vendor; or]~~

~~[(B) sign a vendor contract.]~~

~~[(2) Paragraph (1)(B) of this subsection does not apply to a qualified vendor that the plan administrator approved for participation in the plan before May 7, 1990. If the plan administrator has not executed a vendor contract with a qualified vendor, the plan administrator and the qualified vendor shall execute a vendor contract no later than the 90th day after May 7, 1990. If a vendor contract is not executed, the plan administrator shall terminate the qualified vendor's participation in the plan.]~~

(b) [~~(c)~~] Eligibility requirements of [~~to become~~] a prior plan [~~qualified~~] vendor.

(1) Banks. The plan administrator shall disapprove a bank's application to become a prior plan [~~qualified~~] vendor if:

(A) the bank is not domiciled in the State of Texas;

(B) the FDIC does not insure deposits with the bank; or

(C) the bank is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236 and the related regulations.

(2) Credit unions. The plan administrator shall disapprove a credit union's application to become a prior plan [~~qualified~~] vendor if:

(A) The credit union is not authorized to do business in the State of Texas under either the Texas Credit Union Act (Texas Civil Statutes, Article 2461-1.01 et seq.) or the Federal Credit Union Act (12 United States Code, §1751);

(B) the National Credit Union Administration and the National Credit Union Share Insurance Fund does not insure deposits with the credit union; or

(C) the credit union does not agree to collateralize deferrals and investment income to the extent that:

(i) they exceed the amounts insured by the National Credit Union Administration and National Credit Union Share Insurance Fund; and

(ii) collateralization is required by the sections in this chapter.

(3) Insurance companies.

(A) Upon receiving an application from an insurance company to become a prior plan [~~qualified~~] vendor, the plan administrator shall file a written request with the Texas Department of Insurance for information about the company.

(B) The plan administrator shall disapprove an insurance company's application to become a prior plan [~~qualified~~] vendor if the Texas Department of Insurance notifies the plan administrator that the insurance company:

(i) does not have a certificate of authority to transact business in the State of Texas;

(ii) is not a member of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association; or

(iii) is an impaired or insolvent insurer as defined in the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act (Insurance Code, Article 21.28-D).

(C) An insurance company shall report its A.M. Best, Standard & Poors, Moody's, and Duff & Phelps rating information to the plan administrator annually by January 1st and shall immediately report any change in its rating in the interim to the plan administrator.

(D) The plan administrator shall disapprove an insurance company's application to become a prior plan [~~qualified~~] vendor if the company uses the sex of the person insured or of the recipient to calculate premiums, payments, or benefits for any of its investment products.

(4) Savings and loan associations. The plan administrator shall disapprove a savings and loan association's application to become a prior plan [~~qualified~~] vendor if:

(A) the savings and loan association is a foreign association without a certificate of authority to transact business in the State of Texas as defined and required by the Texas Savings and Loan Act (Texas Civil Statutes, Article 852a);

(B) the FDIC does not insure deposits with the savings and loan association; or

(C) the savings and loan association is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236 and the related regulations.

(5) Prior plan vendors [~~Vendors~~] of mutual funds. The plan administrator shall disapprove a vendor's application to become a prior plan [~~qualified~~] vendor if the vendor proposes to offer a mutual fund as a qualified investment product and the mutual fund is not:

(A) listed on the American Stock Exchange, Boston Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, or a stock exchange approved by the securities commissioner of the State Securities Board in accordance with the Securities Act (Texas Civil Statutes, Article 581-1 et seq.);

(B) designated or approved for designation on notice of issuance on the National Association of Securities Dealers Automated Quotation National Market System; or

(C) registered with the securities commissioner.

(c) [~~(d)~~] Procedure for approving a prior plan [~~vendor as a qualified~~] vendor.

(1) The home office of each prior plan vendor seeking participation in the plan must request an application package from the plan administrator. The plan administrator shall ensure that the application package contains a list of documents and other items that must be submitted to the plan administrator with the application.

(2) The plan administrator may not approve a prior plan vendor for participation in the plan unless:

(A) the plan administrator and the vendor sign a product contract concerning at least one of the vendor's investment products;

(B) the vendor has a federal employers identification number; and

(C) the vendor agrees to accept both transfers to and the investment of deferrals in its qualified investment products.

(3) As a prerequisite to approving an application, the plan administrator shall require a prior plan vendor to:

(A) execute an Employer Appointment of Agent form so that the vendor may file reports directly with the Internal Revenue Service; and

(B) prove to the plan administrator's satisfaction that the vendor is capable of filing [~~quarterly~~] reports as required by §87.19 of this title (relating to reporting [~~Reporting~~] and recordkeeping [~~Recordkeeping~~] by prior plan vendors). [~~Qualified Vendors).~~]

(4) If the plan administrator approves an application, the plan administrator shall sign and send to the prior plan vendor a vendor contract that complies with the sections in this chapter and applicable law.

[~~(5) If the plan administrator disapproves an application, the plan administrator shall send written notice of the disapproval to the vendor. The notice must contain the reasons for the disapproval.~~]

(d) [~~(e)~~] Contacts.

(1) In the application package, a prior plan vendor shall designate one individual who will be:

(A) receiving deferrals and investment income;

(B) acting as a prior plan vendor representative or agent and accepting Plan funds in accordance with instructions on Plan forms;

(C) answering questions about the balances of deferrals and investment income; and

(D) serving as liaison between the plan administrator and vendor management concerning matters of administration and vendor reporting.

(2) In addition to the requirements of paragraph (1) of this subsection, an out-of-state prior plan vendor shall designate a responsible and knowledgeable individual in Texas who the plan administrator may contact for information about the vendor's activities in the plan.

(3) Each prior plan [~~qualified~~] vendor shall update the designations and information required by this subsection no later than the 30th day after a change.

(4) The designations and updates required by this subsection must contain the names, addresses, and business telephone numbers of the individuals designated.

(e) [~~(f)~~] Change of name or legal status by a prior plan [~~qualified~~] vendor.

(1) If a prior plan [~~qualified~~] vendor's name or legal status changes through merger, sale, dissolution, or any other means, the prior plan [~~qualified~~] vendor must notify the plan administrator in writing no later than the 30th day after the change. The notice must contain a detailed description of the transaction that causes the change.

(2) If a change in legal status results in the prior plan [~~qualified~~] vendor's participation in the plan being conducted by a different legal entity, the new entity must notify the plan administrator [~~apply~~] no later than the 90th day after the change for approval as a qualified vendor before the entity may participate in the plan. If the new entity is not approved, participant [~~When the plan is not allowing any new vendors, then the vendor would be immediately put on hold to new business. Participant~~] funds would then be transferred to the revised plan. [~~another qualified vendor in the plan.~~] Transfers under this paragraph shall be made in accordance with §87.15(c) and (d) of this title (relating to Transfers) and shall not result in a fee or penalty being charged against the participant's account. Provided, however, that the plan administrator may, in its sole discretion, choose not to apply this paragraph, if it determines that it would be in the best interests of the plan and participants.

(3) If a change in legal status results in a prior plan [~~qualified~~] vendor's participation in the plan being conducted by a different legal entity that is also a prior plan [~~qualified~~] vendor, participant funds may [~~will~~] be transferred to that prior plan [~~qualified~~] vendor, who then becomes responsible for the reporting requirements of the transferred funds.

(f) [~~(g)~~] Voluntary termination of participation in the plan.

(1) A prior plan [~~qualified~~] vendor may voluntarily terminate its participation in the plan after notifying, in writing, the plan

administrator and all participants whose deferrals and investment income are invested in the vendor's qualified investment products. The prior plan vendor must ensure that the plan administrator and the participants receive the written notice no later than the 60th day before the effective date of the termination.

(2) A prior plan [~~qualified~~] vendor may establish the effective date of its termination from the plan. The prior plan vendor must clearly state the effective date in the written notice required by paragraph (1) of this subsection.

(3) Notwithstanding paragraph (2) of this subsection, if the terminating prior plan [~~qualified~~] vendor sponsors qualified investment products that have specific terms, such as a three-year certificate of deposit or a 30-day passbook account, the effective date of the prior plan vendor's termination may not be before the terms of all those products have expired for every participant unless approved by the plan administrator, the prior plan vendor must hold the participants, the plan and the plan administrator harmless from any fees or penalties that may be applicable in connection with such premature termination.

(4) After receiving notice of termination, the plan administrator shall request each affected participant to submit a prior funds transfer form [~~change agreement~~] for the disposition of his or her deferrals and investment income. For each participant from whom the plan administrator has not received a prior funds transfer form [~~change agreement~~] by the effective date of the termination, the plan administrator shall initiate a transfer of all deferrals and investment income from the terminating vendor's qualified investment products to the revised plan.

(5) When a prior plan [~~qualified~~] vendor voluntarily terminates its participation in the plan, the vendor may not charge or permit to be charged a fee or penalty to participants, the plan or plan administratorfor the transfers made after the notice of termination.

(6) When a prior plan [~~qualified~~] vendor that is an insurance company voluntarily terminates its participation in the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) In this paragraph, the term "terminated life insurance product" means a life insurance product that is no longer a qualified investment product because the life insurance company offering the product has voluntarily terminated the company's participation in the plan.

(B) A participant whose deferrals and investment income have been invested in a terminated life insurance product may continue life insurance coverage with the insurance company offering the product.

(C) An insurance company that voluntarily terminates its participation in the plan must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company must offer continuing coverage in a life insurance product that is comparable to the terminated life insurance product in which the participant's deferrals and investment income were invested.

(D) The premiums for continuing life insurance coverage must be paid by the participant directly to the insurance company and may not be paid with deferrals or investment income.

(E) A participant may exercise the right to continue life insurance coverage only if the participant mails to the insurance company written notice of the participant's intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the company's termination of participation in the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(F) When a participant elects to continue life insurance coverage, the insurance company with which coverage is continuing may not:

(i) refuse to continue the life insurance;

(ii) require a postponement or an interruption in coverage for any length of time;

(iii) require the participant to provide evidence of insurability;

(iv) require the participant to apply for coverage;

(v) require the participant to select a different life insurance product from the product in which the participant's deferrals and investment income were invested before the company's participation in the plan terminated;

(vi) discriminate in any manner against the participant because of the company's termination of its participation in the plan;

(vii) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or

(viii) increase the premiums charged to the participant solely because the company terminated its participation in the plan or because the participant elected to continue coverage.

(G) A prior plan [~~qualified~~] vendor must inform the participant in the written notice required by paragraph (1) of this subsection that the participant has the rights specified in this paragraph. A prior plan [~~qualified~~] vendor must send a copy of this notice to the plan administrator.

(H) If a prior plan vendor does not comply with subparagraph (G) of this paragraph, then a participant may exercise the right to continue insurance up to the 120th day after the prior plan vendor actually mails written notice to the participant, containing a full explanation of the participant's rights.

(g) [~~(h)~~] Inactive prior plan [~~qualified~~] vendors. The plan administrator shall terminate the participation in the plan of an inactive prior plan [~~qualified~~] vendor. See §87.1 of this title (relating to Definitions).

(h) [~~(i)~~] Refusal to accept additional deferrals.

(1) A prior plan [~~qualified~~] vendor may not refuse to accept additional deferrals to any or all its qualified investment products, even if the refusal would be temporary.

(2) If a prior plan [~~qualified~~] vendor refuses to accept additional deferrals to all its qualified investment products, the plan administrator shall terminate the prior plan vendor's participation in the plan.

(3) If a prior plan [~~qualified~~] vendor refuses to accept additional deferrals to fewer than all its qualified investment products, the plan administrator shall terminate the participation in the plan of the qualified investment products that are not accepting additional deferrals.

(i) [~~(j)~~] Collateralization by banks.

(1) This subsection applies only to prior plan [~~qualified~~] vendors that are banks.

(2) In this subsection, the term "deferred compensation information" means the cumulative total of all deferrals on deposit with the prior plan [~~qualified~~] vendor as of the end of the previous month.

(3) At the plan administrator's discretion, the plan administrator may require a prior plan [~~qualified~~] vendor to report deferred compensation information and additional information to the data collection center no later than 1:00 p.m., central time, on a call-in day that the plan administrator considers necessary to evaluate the collateralization requirement under this subsection.

(4) Once each quarter, a prior plan [~~qualified~~] vendor shall furnish to the plan administrator the following information certified by its chief financial officer:

(A) its current capital category as defined in the Prompt Corrective Action regulations, 12 Code of Federal Regulations, Part 325, Subpart B, i.e., well capitalized, adequately capitalized, etc.;

(B) its total capital to risk-weighted assets ratio as defined in the applicable FDIC regulations;

(C) its Tier 1 capital to total book assets ratio as defined in the applicable FDIC regulations;

(D) its Tier 1 capital to risk-weighted ratio;

(E) its most recent call report and/or other financial report that can be used to substantiate subparagraphs (A) - (D) of this paragraph; and

(F) if applicable, evidence of a waiver from the FDIC that permits the prior plan [~~qualified~~] vendor to accept brokered deposits.

(5) A prior plan [~~qualified~~] vendor shall immediately notify the plan administrator if the prior plan [~~qualified~~] vendor's capital category changes before its next call report or if its waiver from the FDIC with regard to brokered deposits expires, is revoked, or materially changes.

(6) A prior plan [~~qualified~~] vendor must collateralize deferrals and investment income as required by the plan administrator. If a monthly report indicates that a prior plan [~~qualified~~] vendor will lose or has lost FDIC pass-through insurance, the prior plan vendor shall immediately pledge additional collateral and comply with the directives of the plan administrator. The plan administrator may suspend or expel an under-collateralized prior plan [~~qualified~~] vendor in accordance with §87.21(a)(8) of this title (relating to Remedies).

(7) A prior plan [~~qualified~~] vendor may not require a participant to withdraw some or all of the participant's deferrals and investment income so that the prior plan vendor may avoid the collateralization requirements imposed by the plan administrator. A prior plan [~~qualified~~] vendor may not establish a maximum amount of deferrals that a participant may invest in the vendor's qualified investment products.

(8) Notwithstanding a prior plan [~~qualified~~] vendor's reinvestment of deferrals and investment income in investment products offered by the prior plan vendor's trust department or by other prior plan vendors, the deferrals and investment income are deemed invested in the vendor's qualified investment products for the purpose of this subsection.

(9) The plan administrator, in its discretion, may immediately transfer under-collateralized funds plus any amount reasonably necessary to prevent future under-collateralization. The transfer shall be carried out in accordance with the procedures set forth in §87.15[~~(e)~~] of this title. The prior plan vendor may not charge the participant a fee or penalty due to a withdrawal of under-collateralized funds.

(j) [~~(k)~~] Collateralization by savings and loan associations.

(1) This subsection applies only to a prior plan [~~qualified~~] vendor that is a savings and loan association.

(2) In this subsection, the term "deferred compensation information" means:

(A) the amount by which the balance of each account as of the end of the previous month exceeds the amount insured by the FDIC; and

(B) the number of accounts whose balances exceed the amount insured by the FDIC.

(3) At the plan administrator's discretion, the plan administrator may require a prior plan [~~qualified~~] vendor to report deferred compensation information and additional information to the data collection center no later than 1 p.m., central time, on a call-in day that the plan administrator considers necessary to evaluate the collateralization requirement under this subsection.

(4) Once each quarter, a prior plan [~~qualified~~] vendor shall furnish to the plan administrator the following information certified by its chief financial officer:

(A) its current capital category as defined in the Prompt Corrective Action regulations, 12 Code of Federal Regulations, Part 325, Subpart B, i.e., well-capitalized, adequately capitalized, etc.;

(B) its total capital to risk-weighted assets ratio as defined in the applicable FDIC regulations;

(C) its Tier 1 capital to total book assets ratio as defined in the applicable FDIC regulations;

(D) its Tier 1 capital to risk-weighted ratio;

(E) its most recent call report and/or other financial report that can be used to substantiate subparagraphs (A) - (D) of this paragraph; and

(F) if applicable, evidence of a waiver from the FDIC that permits the prior plan [~~qualified~~] vendor to accept brokered deposits.

(5) A prior plan [~~qualified~~] vendor shall immediately notify the plan administrator if the prior plan [~~qualified~~] vendor's capital category changes before its next call report or if its waiver from the FDIC with regard to brokered deposits expires, is revoked, or materially changes.

(6) A prior plan [~~qualified~~] vendor must collateralize deferrals and investment income as required by the plan administrator. If a monthly report indicates that a prior plan [~~qualified~~] vendor will lose or has lost FDIC pass-through insurance, the prior plan vendor shall immediately pledge additional collateral and comply with the directives of the plan administrator. The plan administrator may suspend or expel an under-collateralized prior plan [~~qualified~~] vendor in accordance with §87.21(a)(8) of this title (relating to Remedies).

(7) A prior plan [~~qualified~~] vendor may not require a participant to withdraw some or all of the participant's deferrals and investment income so that the prior plan vendor may avoid the collateralization requirements imposed by the plan administrator. A prior plan [~~qualified~~] vendor may not establish a maximum amount of deferrals that a participant may invest in the vendor's qualified investment products.

(8) Notwithstanding a prior plan [~~qualified~~] vendor's reinvestment of deferrals and investment income in investment products

offered by the prior plan vendor's trust department or by other vendors, the deferrals and investment income are deemed invested in the vendor's qualified investment products for the purpose of this subsection.

(9) The plan administrator, in its discretion, may immediately transfer under-collateralized funds plus any amount reasonably necessary to prevent future under-collateralization. The transfer shall be carried out in accordance with the procedures set forth in §87.15[(e)] of this title. The prior plan vendor may not charge the participant a fee or penalty due to a withdrawal of under-collateralized funds.

(k) [(l)] Limits on account balances in credit unions.

(1) This subsection applies only to a qualified vendor that is a credit union.

(2) A prior plan [qualified] vendor may not accept deferrals to an account if the deferrals would cause the balance of the account to exceed $100,000 (as amended), the amount insured by the National Credit Union Administration and National Credit Union Share Insurance Fund unless the vendor or participant has complied with paragraph (6) of this subsection.

(3) In this subsection, the term "deferred compensation information" means:

(A) the amount by which the balance of each account as of the end of the previous month exceeds $100,000 (as amended);

(B) the qualified investment product in which the participant's future deferrals will be invested, in lieu of investing them in the credit union's qualified investment products.

(C) the total amount by which the balances of all reported accounts exceed $100,000 (as amended).

(4) Once each month, a prior plan [qualified] vendor shall report deferred compensation information to the plan administrator no later than 1 p.m., central time, on a call-in day. If a prior plan [qualified] vendor has no accounts that exceed $100,000 (as amended), the prior plan vendor must report that fact to the plan administrator.

(5) The plan administrator shall notify the agency coordinator for each participant whose account exceeds $100,000 (as amended). Upon receiving the notice, the agency coordinator shall request the participant to specify in a change agreement:

(A) the qualified investment product to which at least the amount in the account in excess of $100,000 (as amended) will be moved; and

(B) the qualified investment product in which the participant's future deferrals will be invested, in lieu of investing them in the credit union's qualified investment products.

(6) If a participant does not want funds in excess of $100,000 (as amended) transferred from the credit union, the participant may keep funds at the credit union if:

(A) the credit union will pledge collateral for all funds in excess of $100,000 (as amended) in accordance with plan administrator procedures; or

(B) the participant acknowledges and accepts the liability of uninsured funds through a signed statement on forms furnished by the plan administrator.

(7) If a participant does not submit a change agreement to the agency coordinator immediately after receiving a request from the participant's agency coordinator in accordance with paragraph (5) of this subsection and if paragraph (6) of this subsection is not complied with, the agency coordinator shall notify the plan administrator. Upon receiving the notification, the plan administrator shall:

(A) initiate a transfer of the amount in the account in excess of $100,000 (as amended) in accordance with §87.15[(e)(1)] of this title; and

(B) prohibit the participant from deferring additional amounts to the prior plan [qualified] vendor's qualified investment products.

(l) [(m)] Audits

[(1)] The plan administrator may audit or cause an audit to be performed of a current or former prior plan [qualified] vendor related to [concerning] the vendor's participation in the plan.

[(2) The plan administrator may audit or cause an audit to be performed of a vendor that was a qualified vendor at one time but has since lost its qualified status. The audit may cover the vendor's participation in the plan.]

(m) [(n)] The plan administrator may expel a prior plan vendor that fails to maintain all requirements needed to become a prior plan [qualified] vendor. Such vendor may not charge or permit to be charged a fee or penalty to participants, the plan or plan administrator for the transfers made due to expulsion.

§87.9. Investment Products.

(a) Prohibited activity. A prior plan [qualified] vendor or prior plan vendor representative may not solicit investments in an investment product after August 31, 2000.

(b) New qualified investment products.

(1) Notwithstanding anything to the contrary in the sections in this chapter, other than §87.31 and paragraph (2) of this subsection, the plan administrator may not:

(A) approve an investment product as a qualified investment product; or

(B) issue a product approval notice.

(2) Paragraph (1) (A) and (B) of this subsection do not apply to a qualified investment product that the plan administrator approved for participation in the plan before May 7, 1990. If the plan administrator has not executed a product contract with a prior plan [qualified] vendor that is sponsoring a qualified investment product, the plan administrator and the prior plan [qualified] vendor shall execute a product contract no later than the 90th day after May 7, 1990. If a product contract is not executed, the plan administrator shall terminate the qualified investment product's participation in the plan.

(c) Eligibility of investment products. The investment products that are eligible for approval as qualified investment products are:

(1) fixed and variable rate annuities;

(2) life insurance (except that new life policies may not be offered in the plan by any vendor after December 31, 1992);

(3) stable value account;[mutual funds; and]

(4) self-directed brokerage account;[money market accounts, certificates of deposit, share certificates or passbook savings accounts offered by a bank, savings and loan association, or credit union.]

(5) mutual funds; and

(6) money market accounts, certificates of deposit, share certificates or passbook savings accounts offered by a bank, savings and loan association, or credit union.

(d) Review of investment products.

(1) General requirements. The plan administrator may not issue a product approval notice concerning an investment product unless:

(A) the prior plan [~~qualified~~] vendor offering the investment product submits to the plan administrator the documentation and information the plan administrator requires;

(B) the prior plan [~~qualified~~] vendor offering the product agrees to accept both transfers to and the investment of deferrals in its product;

(C) the plan administrator finds that the advertising material for the product, if any, complies with the sections in this chapter;

(D) the plan administrator determines that the disclosure form for the product complies with the sections in this chapter;

(E) the plan administrator finds that the investment product has a guaranteed minimum interest rate if the product has a variable interest rate;

(F) the plan administrator determines that the investment product complies with §87.7(b)[~~(c)~~](5) of this title (relating to prior plan vendor participation[~~Vendor Participation~~]), if the product is a mutual fund;

(G) the plan administrator concludes that the inclusion of the investment product in the plan would be in the best interests of the plan; and

(H) the plan administrator ascertains that the vendor has obtained the necessary approvals from the appropriate regulatory agencies.

(2) Additional requirements for approving investment products offered by insurance companies. Before the plan administrator may sign a product contract, the plan administrator must:

(A) obtain written confirmation from the Texas Department of Insurance that the investment product has been approved for sale in Texas;

(B) determine that the amount of the investment product's premiums, payments, and benefits are not calculated with regard to the sex of the person insured or of the recipient of the benefits; and

(C) determine that the investment product does not insure anyone other than a participant.

(e) Product contracts.

(1) The plan administrator may not sign a product contract with a prior plan [~~qualified~~] vendor unless the plan administrator has already issued a product approval notice concerning the investment product that will be covered by the product contract.

(2) The plan administrator may not sign a product contract that does not comply with the sections in this chapter and applicable law.

(3) The plan administrator may, in its sole discretion, permit a prior plan [~~qualified~~] vendor to replace, substitute, or merge an existing plan product with another product, if procedures established by the plan administrator are met.

(f) Withdrawal of a qualified investment product from the plan.

(1) A prior plan [~~qualified~~] vendor may withdraw a qualified investment product from the plan after notifying, in writing, the plan administrator and all participants whose deferrals and investment income are invested in the qualified investment product. The prior plan vendor must ensure that the plan administrator and the participants receive the written notice no later than the 60th day before the effective date of the withdrawal.

(2) A prior plan [~~qualified~~] vendor may establish the effective date of a withdrawal of the vendor's qualified investment product. The prior plan vendor must clearly state the effective date in the written notice required by paragraph (1) of this subsection.

(3) Notwithstanding paragraph (2) of this subsection, if a qualified investment product has a specific term, such as a three-year certificate of deposit or a 30-day passbook account, the effective date of the withdrawal may not be before the term of the product has expired for every participant unless approved by the plan administrator, the prior plan vendor must hold the participants, the plan and plan administrator harmless from any fees or penalties that may be applicable in connection with such premature termination or withdrawal. The term of a product will be deemed expired if all participants have transferred their funds to another qualified investment product.

(4) After receiving notice of withdrawal, the plan administrator shall [~~request that the agencies~~] contact each affected participant to submit a prior funds transfer form [~~change agreement~~] for the disposition of their deferrals and investment income. For each participant from whom the plan administrator has not received a prior funds transfer form [~~change agreement~~] by the effective date of the withdrawal, the plan administrator shall initiate a transfer of all deferrals and investment income from the qualified investment product being withdrawn to the default fund [~~other qualified investment products,~~] in the revised plan.

(5) When a prior plan [~~qualified~~] vendor withdraws a qualified investment product from the plan, the vendor may not charge a fee or permit to be charged or penalty to participants, the plan or plan administratorfor transfers made after the notice of withdrawal.

(6) When a prior plan [~~qualified~~] vendor that is an insurance company with existing life policies in the plan withdraws a life insurance product from the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) In this paragraph, the term "withdrawn life insurance product" means a life insurance product that is no longer a qualified investment product because the life insurance company offering the product has withdrawn the product from the plan.

(B) A participant whose deferrals and investment income have been invested in a withdrawn life insurance product may continue life insurance coverage with the insurance company offering the product.

(C) If the insurance company has a life insurance product remaining in the plan that is comparable to the withdrawn life insurance product, this paragraph applies. The insurance company shall offer continuing coverage in:

(i) a qualified investment product that is comparable to the withdrawn life insurance product; and

(ii) a life insurance product that is not a qualified investment product but is comparable to the withdrawn life insurance product.

(D) If the insurance company does not have a life insurance product remaining in the plan that is comparable to the withdrawn life insurance product, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in the withdrawn life insurance product. The insurance company shall offer continuing coverage in a life insurance product that is comparable to the withdrawn life insurance product.

(E) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the coverage directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(F) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the insurance company written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the withdrawal of the life insurance product from the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(G) When a participant elects to continue life insurance coverage, the insurance company with which the coverage is continuing may not:

(i) refuse to continue the life insurance;

(ii) require a postponement or an interruption in coverage for any length of time;

(iii) require the participant to provide evidence of insurability;

(iv) require the participant to apply for coverage;

(v) require the participant to select a different life insurance product from the withdrawn life insurance product;

(vi) discriminate in any manner against the participant because of the company's withdrawal of the product;

(vii) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or

(viii) increase the premiums charged to the participant solely because the company withdrew a life insurance product from the plan or because the participant elected to continue coverage.

(H) A prior plan [~~qualified~~] vendor must inform the participant in the written notice required by paragraph (1) of this subsection that the participant has the rights specified in this paragraph.

(I) If a prior plan vendor does not comply with subparagraph (H) of this paragraph, then a participant may exercise the participant's right to continue insurance up to the 120th day after the prior plan vendor actually mails written notice to the participant containing a full explanation of the participant's rights.

§87.11. Advertising Material and Solicitation.

(a) Definition. In this subsection, the term "advertising material" includes:

(1) descriptive literature or advertisements of an investment provider or TPA [~~a qualified vendor or vendor~~] representative that are published in newspapers, magazines, or other publications;

(2) material an investment provider [~~a qualified vendor~~] or [~~vendor~~] TPA representative encloses in mailing to participants or employees;

(3) scripts used in television or radio advertisements or in telephone solicitations;

(4) displays on billboards and similar media;

(5) scripts, displays and any other plan material used on the internet;

(6) descriptive literature, sales talks, and sales aids that an investment provider or TPA [~~a qualified vendor or vendor representative~~] uses during presentations to participants or employees on a group or individual basis;

(7) all material used to solicit:

(A) increased deferrals from existing participants;

(B) renewals of investments in qualified investment products; or

(C) transfers; and

(8) material distributed by an investment provider or TPA [~~a qualified vendor~~] to a participant who has invested deferrals and investment income in one or more of the [~~vendor's~~] qualified investment products.

(b) General requirements for advertising material.

(1) All advertising material must refer to the plan.

(2) An investment provider or TPA [~~A qualified vendor~~] may not use or authorize a vendor representative to use advertising material without the [~~until the vendor has received the~~] plan administrators prior [~~administrator's~~] written approval [~~of the material~~].

(3) If an investment provider or TPA [~~a qualified vendor~~] does not intend to use or authorize a vendor representative to use any advertising material, the investment provider or TPA [~~vendor~~] must provide written notice of that intention to the plan administrator.

(4) An investment provider or TPA [~~A vendor~~] representative may not use advertising material in connection with a qualified investment product until the qualified vendor offering the product has authorized the use of the material.

(5) In the prior plan, advertising [~~Advertising~~] material may not contain information or statements that conflict with or are misleading concerning the qualified investment product being advertised and it [~~. The advertising material~~] may not state that loans are permitted.

(6) An insurance company must tailor its advertising material to the plan.

(7) The plan administrator may not approve advertising material used by an insurance company or by a prior plan vendor representative of an insurance company until the plan administrator has obtained the Texas Department of Insurance's written approval of the material.

(8) No marketing or solicitation is allowed on previous Plan products after August 31, 2000.

(c) Endorsements.

(1) If a prior plan [~~qualified~~] vendor receives an endorsement of one or more of its qualified investment products, the prior plan vendor shall immediately send written notice of the endorsement to the plan administrator.

(2) An endorser of a qualified investment product may not use advertising material until the endorser has received the plan administrator's written approval of the material.

(3) Advertising material that contains information about an endorsement must state:

(A) the relationship between the prior plan [~~qualified~~] vendor and the endorser; and

(B) the basis for the endorsement.

[(d) General requirements for solicitation.]

[(1) A qualified vendor may solicit business from participants and employees through vendor representatives, the mail, or direct presentations.]

[(2) Qualified vendors and vendor representatives may solicit business at a state agency's office only with the prior permission of the agency.]

[(3) A qualified vendor or vendor representative may not conduct any activity with respect to a qualified investment product unless the appropriate license has been obtained.]

[(4) A qualified vendor or vendor representative may not make a representation about a qualified investment product that is contrary to any attribute of the product or that is misleading with respect to the product.]

[(5) A qualified vendor or vendor representative may not state, represent, or imply that its qualified investment product is endorsed or recommended by the plan administrator, the trustee, a state agency, the State of Texas, or an employee of the foregoing.]

[(6) A qualified vendor or vendor representative may not state, represent, or imply that its qualified investment product is the only product available under the plan.]

[(7) When soliciting business for a qualified investment product, a qualified vendor or vendor representative shall provide each participant a copy of the approved disclosure form for that product. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. The form must be provided regardless of whether the participant decides to invest in the product.]

[(8) A qualified vendor or vendor representative may not use the sales opportunities obtained through participation in the plan to solicit investments in non-qualified investment products. For example, in a presentation to participants, a qualified vendor or vendor representative may not solicit investments in both a non-qualified investment product and a qualified investment product even if the vendor or representative clearly states that the non-qualified investment product is being offered outside the plan.]

[(9) A qualified vendor is responsible for any violations of the sections in this chapter by a vendor representative who is marketing the vendor's qualified investment products.]

[(e) Solicitation methods.]

[(1) A qualified vendor shall notify the plan administrator in writing if the vendor will be marketing its qualified investment products directly. The vendor must ensure that the plan administrator receives the notice before the vendor commences the marketing of its products. If the vendor subsequently decides to use vendor representatives to market its products, the vendor shall notify the plan administrator in accordance with paragraph (2) of this subsection.]

[(2) A qualified vendor shall notify the plan administrator in writing if the vendor will be marketing its qualified investment products through vendor representatives. The notification must contain a complete identification of the vendor representatives who will be marketing the products. Every vendor representative and agent that enrolls participants in the plan and is authorized by the vendor to sign plan forms must be included on this notification. The vendor must ensure that the plan administrator receives:]

[(A) the notice before the vendor commences the marketing of its products; and]

[(B) a written update of the list of vendor representatives no later than November 1 of each year.]

§87.13. Disclosure.

(a) Approval of a disclosure form in prior plan.

(1) A prior plan [vendor or qualified] vendor shall complete an annual [a] disclosure form for each investment product in which a plan participant has an account balance [that the vendor is submitting to the plan administrator for approval as a qualified investment product]. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. A prior plan [vendor or qualified] vendor shall complete a disclosure on each investment product that has plan participant funds [(including those no longer offered)].

[(2) A vendor or qualified vendor must submit each disclosure form to the plan administrator for approval.]

(2) [(3)] Upon receipt, the plan administrator shall review a disclosure form to determine whether it complies with the requirements of this section in addition to any other applicable state or federal regulatory requirements. The plan administrator must approve the disclosure form if it complies. Otherwise, the plan administrator shall disapprove the disclosure form.

[(4) The plan administrator shall notify the vendor or qualified vendor in writing as to whether the plan administrator approves the disclosure form. If the plan administrator disapproves a disclosure form, the plan administrator must include the reasons for disapproval in the notice to the vendor or qualified vendor.]

(3) [(5)] A prior plan [qualified] vendor shall submit [resubmit] its disclosure form to the plan administrator upon request [for approval by no later than March 1 of each year] even if the disclosure form has not changed. The disclosure form must be submitted within 30 days of the plan administrator's request.

(b) Contents of disclosure forms.

(1) A prior plan [qualified] vendor must uniformly state on all its disclosure forms basic information common to all qualified investment products offered by the prior plan vendor and also disclose any other state or federal regulatory information required.

(2) A prior plan [qualified] vendor may not describe two or more qualified investment products on the same disclosure form.

(3) A prior plan [qualified] vendor must attach to a disclosure form any information that will not conveniently fit on the disclosure form itself. Information that a prior plan [qualified] vendor may attach to a disclosure form includes schedules of payments, fees, cash values, or any other items required to be disclosed.

(4) A disclosure form must contain the current interest rate and the date on which the rate could or will change. A disclosure form must include the date the fees or penalties will expire for participants, if applicable.

(5) If a qualified investment product has a variable interest rate, the disclosure form for that product must contain:

(A) the word "variable"; and

(B) a blank for the prior plan vendor's [vendor or vendor] representative to enter the current interest rate.

(6) A prospectus must be submitted for each of those qualified investment products, (if applicable).

(c) Use of disclosure forms.

[(1) A qualified vendor shall supply each agent authorized to do business with the plan a copy of each product's approved disclosure form. Vendor representatives will then be required to use the disclosure information in completing the plan participant's disclosure form.]

[(2) A qualified vendor or vendor representative may solicit business from participants only with respect to qualified investment products for which the plan administrator has approved the disclosure forms.]

(1) [(3)] A prior plan [qualified] vendor or vendor representative must enter the fees/charges and product information on a disclosure form when a participant and the prior plan vendor or representative sign the participation agreement and/or change agreement and the disclosure form.

[(4) When a qualified vendor or vendor representative provides to a participant a disclosure form for a qualified investment product that has a variable interest rate, this paragraph applies. The qualified vendor or vendor representative must enter the current interest rate and the effective date of that rate in the appropriate blanks.]

(2) The prior plan vendor or vendor representative must enter the current interest rate and the effective date of that rate in the appropriate blanks.

(3) [(5)] A prior plan [qualified] vendor [or vendor] representative fails to provide a disclosure form if the vendor or representative does not enter all the required information.

(4) [(6)] If a prior plan [qualified] vendor [or vendor] representative misstates the current interest rate on a disclosure form, the plan administrator may:

(A) consider the prior plan vendor or representative as having failed to provide a disclosure form; or

(B) bind the prior plan[qualified] vendor to the interest rate as stated on the form.

(d) Life insurance products.

(1) This subsection applies when an employee of a prior plan [qualified] vendor or a prior plan vendor representative sells an existing replacement life insurance product to a participant.

(2) The employee or representative shall deliver to the prior plan [qualified] vendor offering the product and to the participant a written statement containing:

(A) the specific reasons why the participant's best interests would benefit from the [additional or] replacement product;

(B) the exact time that will be necessary for the cash value of the replacement life product to reach the cash value of the original life product as of the date of the replacement, if applicable. [; and]

[(C) the earliest date on which the participant could withdraw funds from the replacement life product if an emergency withdrawal is needed.]

(3) Before a transfer or new deferral may become effective, the written statement must be filed with the plan administrator.

(4) An employee of a prior plan [qualified] vendor or a prior plan vendor representative does not satisfy paragraph (2) of this subsection unless the participant signs the statement. If the participant refuses to sign the statement, then the employee or representative may not sell an existing replacement life product to the participant. The employee and [or] representative shall permanently retain a copy of the signed written statement.

§87.15. Transfers.

(a) Transfers initiated by participants. A participant may initiate a transfer of all or part of the participant's deferrals and investment income at any time. The number of transfers that a participant may initiate per year is unlimited.

(b) Transfers initiated by the plan administrator.

(1) Generally.

(A) The plan administrator may initiate a transfer of all or part of a participant's deferrals and investment income if the plan administrator determines that the transfer would be in the best interests of the plan or the participant.

(B) Without limiting the plan administrator's authority to initiate a transfer as specified elsewhere in the sections in this chapter, the plan administrator may initiate a transfer of all deferrals and investment income that are invested in:

(i) the qualified investment products of inactive prior plan [qualified] vendors;

(ii) the qualified investment products of prior plan [qualified] vendors whose participation in the plan has terminated; and

(iii) qualified investment products whose participation in the plan has terminated.

(2) Transfers from credit unions.

(A) The plan administrator shall initiate a transfer of a participant's deferrals and investment income from a credit union's qualified investment product in accordance with §87.7(k)[(l)](7) of this title (relating to prior plan vendor participation [Vendor Participation]).

(B) The authority to initiate a transfer under this paragraph is in addition to the authority under paragraph (1) of this subsection.

(c) Value of amounts involved in a transfer initiated by the plan administrator.

(1) This subsection applies only when the plan administrator initiates a transfer from a qualified investment product because the prior plan vendor sponsoring the product:

(A) has become an inactive prior plan vendor; or

(B) has violated a section in this chapter.

(2) The prior plan [qualified] vendor who offers the qualified investment product from which the transfer is being made may not charge or permit to be charged a fee or penalty to participants, the plan or plan administrator.

(3) The amount involved in a transfer must be equal to the total amount of deferrals and investment income that were invested in the qualified investment product as of the date on which the plan administrator initiates the transfer.

(4) Notwithstanding paragraph (3) of this subsection:

(A) an insurance company may deduct from the amount involved in a transfer the actual cost of insuring the participant whose deferrals and investment income are being moved. The period of insurance coverage that may be considered while calculating the actual cost of insuring the participant:

(i) starts on the day on which the deferrals and investment income were invested in the product; and

(ii) ends on the day on which the plan administrator initiates the transfer; and

(B) the amount involved in a transfer from a mutual fund must be equal to the current market value of the deferrals and investment income as defined in §87.19(a)(2) of this title (relating to reporting [~~Reporting~~] and recordkeeping [~~Recordkeeping~~] by prior plan vendors [~~Qualified Vendors~~]) without considering the deduction of any fees.

(5) This subsection prevails over a conflicting provision in a vendor contract, product contract, disclosure agreement, or any other document.

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

(1) This subsection applies when the plan administrator initiates a transfer of all deferrals and investment income of every participant from a qualified investment product.

(2) The plan administrator shall send a written notice to the prior plan [~~qualified~~] vendor who is sponsoring the qualified investment product. The notice must require the prior plan vendor to:

(A) immediately issue a check or cause a wire-transfer to be made in a lump-sum amount equal to the deferrals and investment income being moved or the plan administrator may choose:

(i) to not immediately exercise the requirement of paragraph (2)(A) of this subsection if it is in the best interest of participants; or

(ii) to request the vendor to issue separate checks or cause separate wire transfers in behalf of each affected participant; and

(B) promptly send a list to the plan administrator containing:

(i) the name of each participant whose deferrals and investment income were moved;

(ii) the amount of the deferrals and investment income that was moved, on a participant-by-participant basis;

(iii) the social security number of each affected participant; [~~and~~]

(iv) the name of the employing state agency of each affected participant;[.]

(v) date of birth;

(vi) participant's address; and

(vii) distribution status and frequency.

(3) If a check is used to make a transfer, this paragraph applies.

(A) The plan administrator, in its discretion, may direct the prior plan [~~qualified~~] vendor to make the check payable to the payee specified by the plan administrator, which may be the revised plan or [~~another qualified vendor or~~] an eligible plan in the case of a plan-to-plan [~~plan to plan~~] transfer. An eligible post-severance plan-to-plan transfer may include a transfer to another eligible governmental plan. If the plan administrator directs the prior plan [~~qualified~~] vendor to send funds directly to the revised plan, [~~another qualified vendor,~~] the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is another prior plan [~~qualified~~] vendor, the prior plan [~~qualified~~] vendor shall promptly deposit the check into the applicable account previously agreed upon. The prior plan [~~qualified~~] vendor shall use its best efforts to ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the prior plan vendor receives notification of the transfer.

(B) If the check is sent to the plan administrator, the plan administrator must endorse the check and deposit the check with the TPA selected by [~~a qualified vendor selected by~~] the plan administrator.

(C) Upon [~~After or before~~] receiving verification of a completed transfer from the qualified vendor selected by the plan administrator, and receiving a list of affected participants from the prior plan [~~qualified~~] vendor, the plan administrator shall [~~direct the agency coordinators for the participants to:~~]

[(i)] notify each affected participant concerning the transfers. [~~; and~~]

~~*[(ii)* request that each affected participant submit a change agreement to the participant's agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.]~~

~~[(D) Promptly after receiving the requested change agreements and determining that the agreements have been properly executed, an agency coordinator shall send the change agreements to the plan administrator.]~~

~~[(E) After receiving a completed change agreement, the plan administrator shall initiate a transfer of the participant's deferrals and investment income in accordance with the agreement.]~~

(4) If a wire-transfer is used to make a transfer, this paragraph applies.

(A) The prior plan [~~qualified~~] vendor must ensure that the TPA [~~qualified vendor~~] selected by the plan administrator to hold these funds receives the wire-transfer within 48 hours.

(B) The TPA [~~qualified vendor~~] selected by the plan administrator shall promptly deposit the wire-transfer into the applicable account previously agreed upon, and notify the plan administrator concerning the deposit.

~~[(C) After or before the plan administrator receives notice that the qualified vendor chosen by the plan administrator to hold these funds has deposited the wire-transfer and after the plan administrator has received a list of affected participants from the vendor, the plan administrator shall direct the agency coordinators for the participants to:]~~

~~*[(i)* notify each affected participant concerning the transfers; and]~~

~~*[(ii)* request that each affected participant submit a change agreement to the participant's agency coordinator for the purpose of designating the qualified investment product that will receive the participant's deferrals and investment income.]~~

~~[(D) Promptly after receiving the requested change agreements and determining that the agreements have been properly executed, an agency coordinator shall send the change agreements to the plan administrator.]~~

~~[(E) After receiving a completed change agreement, the plan administrator shall initiate a transfer of the participant's deferrals and investment income in accordance with the agreement.]~~

~~[(e) Procedures for making a transfer of less than all deferrals and investment income from a qualified investment product.]~~

[~~(1) This subsection applies only when subsection (d) of this section does not apply.~~]

[~~(2) If the plan administrator initiates a transfer, this paragraph applies.~~]

[~~(A) The plan administrator shall send a written notice to the qualified vendor that is sponsoring the qualified investment product. The notice must require the vendor to issue a check or a wire transfer in an amount equal to the deferrals and investment income being moved. The notice may be sent with or without prior notice to the participant whose deferrals and investment income are being moved.~~]

[~~(B) The plan administrator, in its discretion, may direct the qualified vendor to make the check payable to the payee specified by the plan administrator, which may be another qualified vendor or an eligible plan in the case of a plan to plan transfer. If the plan administrator directs the qualified vendor to send funds directly to another qualified vendor, the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is another qualified vendor, the qualified vendor shall promptly deposit the check into the applicable account previously agreed upon. The qualified vendor shall ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the vendor receives notification of the transfer.~~]

[~~(C) If the check is sent to the plan administrator, the plan administrator shall endorse and deposit the check in a qualified investment product specifically designated to receive transfers initiated by the plan administrator.~~]

[~~(D) After depositing the check, or after receiving notification from the qualified vendor that the check has been deposited, the plan administrator must notify the agency coordinator for the participant whose deferrals and investment income were moved. The notification must:~~]

[~~(i)~~ ~~state the reason for the transfer;~~]

[~~(ii)~~ ~~direct the agency coordinator to request that the participant complete a change agreement to designate the qualified investment product that will receive the participant's deferrals and investment income; and~~]

[~~(iii)~~ ~~for a transfer from a credit union under subsection (b)(2) of this section, direct the agency coordinator to inform the participant that the participant may require the reinvestment of the transferred amounts in the credit union, unless the plan administrator determines that reinvestment in the credit union would not be in the best interests of the plan.~~]

[~~(E) After receiving a participant's completed change agreement, the plan administrator shall send the deferrals and investment income to the qualified vendor designated in the change agreement for investment in accordance with the agreement.~~]

[~~(F) The receiving qualified vendor shall not reject and return funds to the ERS or to a previous qualified vendor who transfers funds at the direction of the plan administrator when plan forms have been signed by a valid vendor agent/representative to transfer or defer funds to that vendor;~~]

(C) [~~(G)~~] The receiving TPA or [~~qualified~~] prior plan vendor shall acknowledge receipt of the deferrals and investment income in the manner required by the plan administrator.

(D) [~~(H)~~] Upon approval of the plan administrator, the prior plan vendor transferring funds may cause a wire transfer to be made in lieu of issuing a check:

(i) if the prior plan vendor sending funds complies with procedures specified by the plan administrator;

(ii) the prior plan vendor receiving funds is approved by the plan administrator to accept a wire transfer of funds; and

(iii) the prior plan vendor receiving funds complies with procedures specified by the plan administrator.

(5) [~~(3)~~] If a participant initiates a transfer, this paragraph applies.

(A) A participant may initiate a transfer of the participant's deferrals and investment income through the execution of a prior funds transfer form [~~change agreement and a disclosure form~~] in accordance with §87.5(h) of this title (relating to Participation by Employees). [~~and also through telephone transfers (if approval has been obtained from the plan administrator) in accordance with §87.15(h) of this title (relating to Telephone Transfers within Qualified Vendors). This requirement applies to all transfers, even transfers within the same vendor. A transfer is voidable at the instance of the plan administrator or the participant making the transfer if both a change agreement and a disclosure form are not properly executed and filed. However, a disclosure form is not required when a participant initiates a transfer to an existing account for the same participant, regardless of whether the account is with another qualified vendor.~~]

(B) After receiving a completed Prior Funds Transfer form [~~change agreement and disclosure form~~], the plan administrator shall notify the TPA. [~~qualified vendor from whose qualified investment product the transfer has been requested.~~]

(C) The plan administrator, in its discretion, may direct the prior plan [~~qualified~~] vendor to make the check payable to the payee specified by the plan administrator, which may be the TPA [~~another qualified vendor~~] or an eligible plan in the case of a plan-to-plan [~~plan to plan~~] transfer. An eligible plan-to-plan post-severance transfer may include a transfer to another eligible governmental plan. If the plan administrator directs the prior plan [~~qualified~~] vendor to send funds directly to the TPA [~~another qualified vendor~~], the plan administrator shall provide instructions concerning the investment of the amounts transferred. If the specified payee is the TPA, they [~~another qualified vendor, the qualified vendor~~] shall promptly deposit the check into the applicable account previously agreed upon. The prior plan [~~qualified~~] vendor shall use its best efforts to ensure that the plan administrator or the specified payee receives the check no later than the 15th day after the prior plan vendor receives notification of the transfer.

(D) If the check is sent to the plan administrator, the plan administrator shall:

(i) endorse the check in favor of the TPA [~~qualified vendor~~] that will be receiving the transfer; and

(ii) mail to the TPA [~~qualified vendor~~] that will be receiving the transfer the endorsed check and written instructions concerning the investment of the amounts transferred.

(E) The TPA [~~qualified vendor~~] must send written confirmation to the plan administrator concerning the TPA's [~~vendor's~~] receipt of the transferred funds and written instructions. The TPA [~~qualified vendor~~] must ensure that the plan administrator receives the written confirmation no later than the 15th day after the TPA [~~qualified vendor~~] receives the transferred funds and instructions.

(F) Upon approval of the plan administrator, the vendor transferring funds may cause a wire transfer to be made in lieu of issuing a check:

(i) if the prior plan vendor sending funds complies with procedures specified by the plan administrator;

(ii) the prior plan vendor receiving funds is approved by the plan administrator to accept a wire transfer of funds; and

(iii) the prior plan vendor receiving funds complies with procedures specified by the plan administrator.

(e) [~~(f)~~] Resolving transfer-related problems. A prior plan [~~qualified~~] vendor shall use its best efforts, exercise good faith and reasonable diligence in resolving all transfer-related administrative problems with the plan administrator or participant within a reasonable length of time, not to exceed 30 days, after receiving a transfer notification. The plan administrator may not complete any forms provided by a prior plan [~~qualified~~] vendor in connection with a transfer.

(f) [~~(g)~~] Transfers into life insurance products.

(1) The only transfer allowed into a life product is a transfer from an existing life insurance product to a [~~an existing replacement~~] life insurance product approved by the plan administrator [~~within the same vendor~~].

(2) This paragraph is effective until December 31, 1998. When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same prior plan vendor, the State of Texas:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(3) This paragraph is effective January 1, 1999, and thereafter. When a participant chooses to transfer deferrals and investment income to a[~~an existing replacement~~] life insurance product within the same prior plan vendor, the life insurance product shall be held in trust for the exclusive benefit of the participant and beneficiaries.

(g) [~~(h)~~] Telephone transfers [~~within qualified vendors~~].

(1) A prior plan vendor may apply for approval to offer to participants the capability of making transfers of plan deferrals and investment earnings currently on account with that prior plan vendor from one qualified investment product or products to another qualified investment product or products within that prior plan vendor via telephone instructions given by the participant or plan administrator.

(2) When a participant is in distribution, the telephone transfer option may be used; however, it must be used in accordance with §87.17(i)(6)(C) of this title (relating to Transfers).

(3) The prior plan vendor and the participant must obtain approval from the plan administrator and must follow all instructions and procedures prescribed by the plan administrator.

§87.17. Distributions.

(a) In general. Upon request, the plan administrator shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

(1) the participant has attained age 70.5;

(2) the participant has died;

(3) the participant's employment with the State of Texas has terminated other than through death; or

(4) the participant has complied with subsection (l) of this section relating to the one-time election of distribution that does not exceed the dollar limit under Internal Revenue Code of 1986 as amended, §457(e)(9) and EGTRRA.

(b) Definitions.

(1) In subsections (m)-(o) of this section, the term "participant's deferrals and investment income" means the cash value of the participant's deferrals and investment income after considering all surrender charges, costs of insurance, forfeitures, and other similar charges.

(2) In this section, a beneficiary or secondary beneficiary "survives" another person only if the beneficiary or secondary beneficiary is alive on the day after the person's death.

(c) Content of a distribution agreement.

(1) A distribution agreement must contain but shall not be limited to:

(A) identifying information concerning the participant, including the date of birth and social security number of the participant;

(B) the name of the prior plan [~~qualified~~] vendor or revised plan vendor covered by the agreement;

(C) the type of qualified investment product from which distributions will be made, including policy/certificate/or account number;

(D) the date on which the participant separated from service, attained age 70.5, or died, whichever is applicable;

[~~(E) the balance of the participant's deferrals in the qualified investment product from which distributions will be made;~~]

(E) [~~(F)~~] the beginning date of the distributions;

(F) [~~(G)~~] the frequency of distribution;

(G) [~~(H)~~] the amount to be distributed during each time period or the method for calculating the amount to be distributed during each time period; and

(H) [~~(I)~~] beneficiary information, including date of birth(s) and social security number(s).

(2) The person filing the distribution agreement must attach a properly executed Form W-4P to the agreement.

(3) A distribution agreement must be consistent with the distribution options available for the qualified investment product covered by the agreement. The prior plan vendor agent/representative signature on the distribution agreement signifies that the distribution option is available and can be implemented as requested.

(d) Commencement of distributions. Notwithstanding anything in a distribution agreement:

(1) the earliest a participant or beneficiary may begin receiving a distribution is the 51st day after the occurrence that entitles the participant or beneficiary to the distribution, except this paragraph does not apply to an emergency withdrawal or a one-time election distribution; and

(2) the latest a participant may begin receiving a distribution is [~~the later of:~~]

[~~(A)~~] April 1st of the calendar year following the calendar year in which the former employee attains age 70.5. [~~7.5; or~~]

[~~(B) April 1st of the calendar year following the calendar year in which the employee's employment with the State of Texas terminates.~~]

(e) Filing of distribution agreements by participants.

(1) This subsection applies when a participant becomes entitled to a distribution because:

(A) the participant has attained age 70.5; or

(B) the participant's employment with the State of Texas has terminated other than through death.

(2) A participant must file a single distribution agreement for all qualified investment products in which the participant's deferrals are invested.

(3) Notwithstanding anything to the contrary in this subsection, a participant who has not separated from service and who has reached age 70.5 may [~~must~~] file a distribution agreement [~~only~~] if the participant wants distributions to begin.

(4) Notwithstanding any other plan provision, amounts deferred by a former participant of the plan not yet payable or made available to such participant may be transferred to another eligible plan of which the former participant has become a participant, if:

(A) the plan receiving such amounts provides for their acceptance;

(B) a participant separates from service with the participant's agency and accepts employment with another entity maintaining an eligible deferred compensation plan; and

(C) a participant has not yet begun receiving plan distributions.

(5) A participant or a beneficiary of a participant who previously filed an irrevocable distribution election under the prior [~~previous~~] plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(6) A participant may request a trustee-to-trustee transfer of assets from the prior [~~previous~~] plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in Internal Revenue Code §414(p) and Internal Revenue Code §415(n)(3)(A)) under such plan or a repayment to which Internal Revenue Code §415 does not apply by reason of subsection (k)(3) thereof.

(7) Upon receipt of a certified copy of a qualified domestic relations [~~relation's~~] order, the plan administrator may distribute to an alternate payee in a lump sum immediate distribution, the proceeds as directed by the order.

(8) At a participant's request, the plan administrator may process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

(f) Minimum distributions during the life of a participant.

(1) This subsection applies to distributions to a participant during the life of the participant, notwithstanding anything to the contrary in the participant's distribution agreement.

(2) The amount distributed to the participant must be calculated so that the distributions:

(A) will be distributed over a period not exceeding the life expectancy of the participant or the life expectancy of the participant and the participant's named beneficiary; and

(B) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9), EGTRRA and associated statutes and regulations.

(3) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraph (2) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraph (2) of this subsection.

(4) For the purpose of paragraph (2) of this subsection, life expectancies may not be recalculated annually.

(g) Review of distribution agreements by the plan administrator. The plan administrator shall review each distribution agreement received [~~from an agency coordinator~~] to ensure that:

(1) a distribution would be in compliance with the sections in this chapter; and

(2) the minimum distribution requirements of this section have been satisfied.

(h) Amendments of distribution agreements.

(1) Beginning date for a distribution. The beginning date for a distribution may be deferred or cancelled, and the amended distribution agreement must be received by the plan administrator no later than the 30th day before the original distribution begin date.

(2) Frequency of distribution. The frequency of distribution may be amended if the plan administrator receives an amended distribution agreement no later than the 30th day before the beginning date of the first distribution.

(3) Amount of distribution. The amount to be distributed during each time period may be amended only if the plan administrator receives an amended distribution agreement no later than the 30th day before the beginning date of the first distribution.

(4) Beneficiaries.

(A) The primary and secondary beneficiaries named in a distribution agreement may be changed at anytime by filing a change agreement with the agency coordinator of the state agency at which the participant was employed or by submitting a beneficiary designation form directly with the TPA, for the revised plan.

(B) Upon receipt of the change agreement, the agency coordinator shall send the agreement to the plan administrator.

(C) The change agreement is effective upon receipt by the plan administrator.

(D) A beneficiary designation that names a former spouse is invalid unless the designation was signed after the date of divorce and received by the plan administrator.

(5) Emergency withdrawals. Notwithstanding anything to the contrary in this subsection, a distribution agreement may be amended to relieve a severe financial hardship caused by an [~~a sudden and~~] unforeseeable emergency.

(6) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend the participant's distribution agreement must file an amended distribution agreement with the plan administrator [~~participant's agency coordinator~~]. The amended distribution agreement must contain the word "Amended" at the top of the agreement.

(B) Upon receipt of the amended distribution agreement, the plan administrator; [~~agency coordinator~~] shall promptly review the agreement for compliance with the sections in this chapter.

(C) If the amended distribution agreement does not comply with the sections in this chapter, the agreement will be returned to the participant or beneficiary for corrections.

(D) After the plan administrator receives a signed distribution agreement, the plan administrator and the prior plan [~~qualified~~] vendor or TPA covered by the agreement shall take the steps specified in subsections (h) and (j) of this section.

(7) Effective date of amended distribution agreements is 30 days after the plan administrator receives the form. An amended distribution agreement is effective with the first distribution.

(i) Procedure for making distributions.

(1) Upon receiving a letter of authorization, the prior plan [~~qualified~~] vendor or TPA shall issue checks payable to the participant or beneficiary and mail the checks as instructed in the letter of authorization.

(2) The plan administrator may not complete any forms provided by a prior plan [~~qualified~~] vendor in connection with a distribution. A prior plan [~~qualified~~] vendor may not require the plan administrator to submit periodic letters of authorization beyond the initial letter of authorization unless the plan administrator has agreed in writing. A prior plan [~~qualified~~] vendor may not impose any requirements as a prerequisite to a distribution that are not specifically mentioned in the sections in this chapter.

(3) The plan administrator shall provide each prior plan [~~qualified~~] vendor with the names and signatures of the individuals who are authorized to sign letters of authorization.

(4) A prior plan [~~qualified~~] vendor shall confirm each letter of authorization as instructed in the letter.

(j) Emergency withdrawals.

(1) A participant may request an emergency withdrawal regardless of whether a distribution to the participant has already started.

(2) The participant must request the emergency withdrawal by filing a completed emergency withdrawal application with the plan administrator. An emergency withdrawal application:

(A) must show that the prerequisites for making an emergency withdrawal have been fulfilled; and

(B) must be accompanied by two copies of a Form W-4P specifically tailored to the withdrawal.

(3) The plan administrator shall approve the emergency withdrawal if the plan administrator determines that:

(A) an unforeseeable emergency has occurred;

(B) the severe financial hardship [~~caused by the unforeseeable emergency~~] cannot be relieved:

(i) through reimbursement or compensation by insurance or otherwise;

(ii) by liquidating the assets of the participant to the extent the liquidation of the assets would not itself cause severe financial hardship;

(iii) by cessation of deferrals under the plan;

(iv) by other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; or

(v) through a combination of the actions specified in clauses (i) - (iii) of this subparagraph; and

(C) the emergency withdrawal would satisfy the federal regulations for emergency withdrawals under the Internal Revenue Code of 1986, §457, as amended and, EGTRRA.

(4) If the plan administrator approves an emergency withdrawal, the plan administrator shall determine the amount of the withdrawal. The amount may not exceed the amount reasonably needed to overcome the severe financial hardship, after considering the federal income tax liability resulting from the withdrawal.

(5) The term "unforeseeable emergency" means a severe financial hardship to a participant caused by:

(A) a sudden and unexpected illness or accident of a participant or of a participant's dependent (as defined in the Internal Revenue Code of 1986 as amended, §152(a) and EGTRRA;

(B) the loss of the property of a participant because of a casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, as a result of a natural disaster); or

(C) a similar extraordinary and unforeseeable circumstance arising from events beyond the control of a participant, which includes the prevention of foreclosure or eviction from a participant or beneficiary's primary residence, funeral expenses, and payment of non-reimbursed medically necessary expenses, which includes non-refundable deductibles, as well as the cost of prescription drug medications [~~medical and funeral expenses~~].

(6) The term "unforeseeable emergency" excludes:

(A) the necessity to send a child to college;

(B) the purchase of a home; and

(C) other similar circumstances.

(7) The plan administrator may rely on the information provided by a participant in connection with the participant's request for an emergency withdrawal. The participant is solely responsible for the sufficiency, accuracy, and veracity of the information.

(8) If the plan administrator denies a participant's request for an emergency withdrawal or if the participant disagrees with the amount of the approved emergency withdrawal, the participant may appeal to the Employees Retirement System of Texas in accordance with §87.23 of this title (relating to the Grievance Procedure).

(9) If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the Texa$aver 401(k) plan for a six month period following the approval.

(10) The plan administrator may not approve an emergency withdrawal request from a primary or secondary beneficiary.

(k) One-time election of distribution that does not exceed the dollar limit under Internal Revenue Code of 1986 as amended,

§457(e)(9) and EGTRRA. A participant may elect to receive a distribution of the total account balance if:

(1) such amount does not exceed the dollar limit under Internal Revenue Code of 1986, as amended, §457(e)(9) and EGTRRA as of the date of the election;

(2) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of the distribution;

(3) there has been no prior distribution under the plan to such participant to which this subsection applied; and

(4) a one-time election form is completed and submitted to the plan administrator through the participant's state agency coordinator.

(l) Naming of beneficiaries. When a participant or beneficiary files a distribution agreement, the participant or beneficiary may name one or more primary and secondary beneficiaries. The naming of beneficiaries in a distribution agreement supersedes any previous naming of beneficiaries in a participation agreement or change agreement.

(m) Death of a participant when the participant has named a beneficiary.

(1) This subsection applies only if a participant has named a beneficiary in a participation agreement, change agreement, beneficiary designation form or distribution agreement.

(2) When this subsection requires the plan administrator to order a distribution, the plan administrator shall order the distribution on the 90th day after a participant's death:

(3) The plan administrator shall order a distribution to a primary beneficiary if the beneficiary:

(A) survives the participant; and

(B) is alive on the date of the order.

(4) The plan administrator shall order a distribution to a secondary beneficiary if:

(A) the secondary beneficiary survives the participant;

(B) the secondary beneficiary is alive on the date of the order; and

(C) no primary beneficiaries survive the participant.

(5) The plan administrator shall order a distribution in accordance with subsection (p) of this section if a primary or secondary beneficiary survives the participant but is not alive on the date of the order.

(6) This paragraph applies if a participant designates more than one primary beneficiary and more than one primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving primary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary beneficiaries who did not survive the participant and the surviving secondary beneficiaries, if any, may not receive any benefits.

(7) This paragraph applies if a participant designates more than one secondary beneficiary, more than one secondary beneficiary survives the participant, and no primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving secondary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary and secondary beneficiaries who did not survive the participant may not receive any benefits.

(8) The plan administrator shall order the lump-sum payment to the participant's estate of the balance of the participant's deferrals and investment income if:

(A) the participant named a primary and a secondary beneficiary but neither survived the participant; or

(B) the participant named a primary beneficiary but did not name a secondary beneficiary and the primary beneficiary did not survive the participant.

(9) The plan administrator shall order the lump-sum distribution of a participant's deferrals and investment income to the person entitled to receive the distribution if the person is alive on the date of the order and the person files a distribution agreement requesting a lump-sum distribution.

(10) When the plan administrator orders a distribution to a primary or secondary beneficiary, the plan administrator's order must be in accordance with the beneficiary's distribution agreement so long as the agreement complies with the sections in this chapter.

(11) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant did not begin before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed must be calculated so that the distributions:

(A) will begin no later than December 31 in the year that the participant would have attained age 70.5 or December 31 of the year following the participant's death, whichever is later for a spousal beneficiary; or

(B) December 31 of the year following the participant's death and entire amount must be distributed by the end of the fifth year following the year of participant's death for non-spousal beneficiary.

(C) will be made over the life of the person receiving the distributions or over a period not extending beyond the life expectancy of the person;

(D) will be made in substantially non-increasing amounts;

(E) will be made annually or more frequently than annually after the first distribution; and

(F) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9), and EGTRRA and associated statutes and regulations.

(12) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant began before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed to the primary or secondary beneficiary must be calculated so that the distributions:

(A) will be made at least as rapidly as under the method of distribution selected by the participant; and

(B) will satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9) and EGTRRA.

(13) If a participant dies before distributions to him began and the beneficiary or secondary beneficiary entitled to receive the participant's deferrals and investment income is the participant's surviving spouse, this paragraph applies.

(A) Paragraph (11) of this subsection applies to the distributions to the surviving spouse except as specified in this paragraph.

(B) Notwithstanding paragraph (11) of this subsection, the surviving spouse may delay the start of the receipt of the deferrals and investment income until a date not later than the date when the participant would have attained age 70.5.

(C) Notwithstanding paragraph (11) of this subsection, after a distribution to the surviving spouse begins, the entire amount must be paid over a period not exceeding the spouse's life expectancy.

(D) If the surviving spouse dies before distributions to the spouse begin, then the surviving spouse is a participant for the purpose of paragraph (11) of this subsection.

(14) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraphs (11)-(13) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraphs (11)-(13).

(15) For the purpose of paragraphs (11)-(13) of this subsection, life expectancies may not be recalculated annually.

(n) Death of a participant when the participant has not named a beneficiary.

(1) This subsection applies only when a participant has not named a beneficiary in a participation agreement, change agreement, beneficiary designation form, or distribution agreement.

(2) The plan administrator shall order the distribution to the participant's estate of the balance of the participant's deferrals and investment income.

(o) Death of a beneficiary.

(1) This subsection applies if:

(A) a participant named a beneficiary in a participation agreement, change agreement, or distribution agreement or a beneficiary designation form;

(B) the participant died;

(C) the beneficiary survived the participant but has since died;

(D) the plan administrator has ordered, in accordance with subsection (m) of this section, a distribution to the beneficiary or would have ordered a distribution to the beneficiary if the beneficiary had not died; and

(E) the beneficiary did not receive all the participant's deferrals and investment income before the beneficiary's death.

(2) If the deceased beneficiary filed a distribution agreement and the agreement names a primary beneficiary, the plan administrator shall:

(A) allow the primary beneficiary to have a distribution which will be made at least as rapidly as under the method of distribution selected by the participant, and which will also satisfy the minimum distribution requirements of the Internal Revenue Code of 1986 as amended, §457(d)(2), §401(a)(9) and EGTRRA; or

(B) order a lump sum payment to the primary beneficiary's estate if the primary beneficiary survived the beneficiary who filed the distribution agreement but is not alive on the date of the order.

(3) If the deceased beneficiary filed a distribution agreement and the agreement names a secondary beneficiary, the plan administrator shall order a lump-sum payment to:

(A) the secondary beneficiary if:

(i) the secondary beneficiary is alive on the date of the order; and

(ii) no primary beneficiary survived the deceased beneficiary;

(B) the secondary beneficiary's estate if:

(i) the secondary beneficiary survived the deceased beneficiary;

(ii) the secondary beneficiary is not alive on the date of the plan administrator's order; and

(iii) no primary beneficiary survived the deceased beneficiary.

(4) The lump-sum payment must be made to the estate of the deceased beneficiary if:

(A) the deceased beneficiary's distribution agreement does not name a beneficiary;

(B) the deceased beneficiary did not file a distribution agreement; or

(C) no beneficiary named in the deceased beneficiary's distribution agreement survived the deceased beneficiary.

(5) When more than one primary or secondary beneficiary of a deceased beneficiary is entitled to a lump-sum distribution, the distributions must be made in equal shares unless the deceased beneficiary's distribution agreement provides otherwise.

(p) Distributions to minors and incompetents.

(1) The plan administrator may authorize the payment of a distribution to a person or entity other than the participant or beneficiary otherwise entitled to receive the distribution if satisfactory evidence is presented to the plan administrator that the participant or beneficiary is:

(A) a minor; or

(B) has been adjudicated by a court of law as mentally incompetent and unable to provide a valid release for the payment.

(2) If the conditions of the preceding paragraph are satisfied, the plan administrator shall make the distribution payable to the guardian of the participant or beneficiary.

(3) If no guardian has been appointed and after having obtained a proper release, the plan administrator shall make the distribution payable to:

(A) the person or entity maintaining custody of the participant or beneficiary;

(B) the custodian of the participant or beneficiary under the Texas Uniform Gifts to Minors Act (Texas Property Code, §141.002 et seq.) if the participant or beneficiary resides in the State of Texas;

(C) the custodian of the participant or beneficiary under a law similar to the Texas Uniform Gifts to Minors Act if the participant or beneficiary resides outside the State of Texas; or

(D) the court of law with jurisdiction over the participant or beneficiary.

(q) Distributions to missing persons.

(1) This subsection applies when the plan administrator is unable to determine the location of a participant or beneficiary who is entitled to a distribution.

(2) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator for the participant or beneficiary must send a certified letter to the last known address of the participant or beneficiary.

(3) If the certified letter does not result in the discovery of the location of the participant or beneficiary, the agency coordinator shall inform the plan administrator and provide proof to the plan administrator that the certified letter was sent.

(4) Upon receiving the notification and proof from an agency coordinator, the plan administrator may direct that all benefits due the participant or beneficiary be deposited in a qualified investment product that the plan administrator has specifically designated for this purpose.

(r) Processing of distributions and emergency withdrawals. A prior plan [~~qualified~~] vendor or TPA shall process distributions and emergency withdrawals and resolve administrative problems with the plan administrator within a reasonable length of time, not to exceed the 30th day after receiving a letter of authorization for distributions and not to exceed the 15th day after receiving a letter of authorization for emergency withdrawals.

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior [~~previous~~] plan must transfer those balances to the revised plan in order to qualify for a plan loan.

(1) In accordance with the federal Soldiers' & Sailors' Civil Relief Act of 1940, interest will accrue during the period of suspended payments at the original loan rate or at the rate of six percent (6%), whichever is less. In no event will interest exceed the maximum rate permitted by applicable law.

(2) In accordance with Internal Revenue Code §72 (p) and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the Participant is on a bona fide leave of absence and the leave is either without pay or the Participant's after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date; accept upon express approval of the hardship committee. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(t) Federal withholding and reporting requirements.

(1) A prior plan [~~qualified~~] vendor or TPA shall file all reports required by the Internal Revenue Service (IRS) when any deferrals and investment income are distributed or otherwise made available to a participant or beneficiary. Payments made to a participant during the participant's life must be reported as taxable wages on a Form 1099-R or another appropriate form which may be hereafter promulgated by the IRS. Pursuant to the provisions of Internal Revenue Service Revenue Ruling 86-109 (1986-2 CB 196), payments to the beneficiary of a deceased participant must be reported on IRS Form 1099-R (or another appropriate form which may be hereafter promulgated by the IRS) as taxable income of the beneficiary.

(2) A prior plan [~~qualified~~] vendor or TPA shall file an application for authorization to act as agent of the State of Texas, or effective January 1, 1999, the plan, with the District Director of the Internal Revenue Service Center where the prior plan [~~qualified~~] vendor or TPA files its returns. The application shall include Form 2678 - Employer Appointment of Agent under Section 3504 of the Internal Revenue Code, which shall be supplied by the plan administrator, and shall be completed and filed in accordance with the instructions set forth in Internal Revenue Service Publication 1271. The prior plan [~~qualified~~] vendor shall promptly furnish to the plan administrator a copy of such vendor's letter of authorization from the Internal Revenue Service approving the appointment of the prior plan [~~qualified~~] vendor as agent.

(3) When reporting to the Internal Revenue Service, the prior plan [~~qualified~~] vendor and TPA shall use the vendor's Federal Employer Identification Number and shall comply with all requirements of Revenue Procedure 70-6 as set out in Internal Revenue Service Publication 1271 and as subsequently amplified or superseded by subsequent Revenue Procedures. A prior plan [~~qualified~~] vendor may not use the federal employer identification number of the plan, plan administrator, TPA, or the State of Texas. Regardless of how many qualified investment products a prior plan [~~qualified~~] vendor sponsors, the vendor must use the same federal employer identification number for all reports to the Internal Revenue Service.

(4) Federal tax withholding is mandatory for distributions to participants. A prior plan [~~qualified~~] vendor or TPA shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4P submitted by the participant at the time of a distribution. If no Form W-4P is provided, the participant must be considered single with no dependents. Vendors who maintain participant account balances in the prior [~~previous~~] plan shall provide the required IRC 402(f) safe harbor notice to all 457 plan participants prior to the payment of an eligible rollover distribution. The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Internal Revenue Code of 1986 as amended, §457 and EGTRRA.

(5) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary and must be reported on a Form 1099-R in accordance with paragraph (m) of this subsection.

(6) A prior plan [~~qualified~~] vendor or TPA shall mail a copy of all reports filed with the Internal Revenue Service about a participant or beneficiary to the participant's or beneficiary's home address.

(u) Notwithstanding any provisions to the contrary, the option to receive periodic distributions from a product in the "prior plan" by a terminated participant or beneficiary whose original distribution begins on or after October 1, 2004 is removed. Effective October 1, 2004, terminating participants and beneficiaries must transfer all funds to the revised plan, receive a lump sum distribution of their entire plan balance, or roll their entire account balance into an account outside of the prior plan.

§87.19. Reporting and Recordkeeping by Prior Plan Vendors [~~Qualified Vendors~~].

(a) Definition of current market value. In this section, the term "current market value" has the following meanings.

(1) For an investment in a qualified investment product offered by a bank, credit union, or savings and loan association, current

market value means the amount of deferrals plus investment income minus withdrawals minus applicable fees.

(2) For an investment in a mutual fund, current market value means the price of each share at the end of the calendar quarter multiplied by the number of shares purchased with deferrals and investment income minus applicable fees.

(3) For an investment in a term life insurance product, the current market value is usually zero.

(4) For an investment in a life insurance product, current market value means the cash value of the product minus applicable fees.

(5) For an investment in an annuity, current market value equals the amount of deferrals plus investment income minus payouts minus applicable fees. For annuitized accounts, current market value means the present value of all remaining payments, taking into consideration the prevailing statutory interest rates pursuant to the Texas Insurance Code, Article 3.28.

(b) Reports to participants or beneficiaries.

(1) Generally.

(A) A prior plan [~~qualified~~] vendor shall issue a report after the end of each calendar quarter to each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the prior plan vendor, except if the investment is in a product that is annuitized.

(B) The report shall cover all transactions during a calendar quarter.

(C) A prior plan [~~qualified~~] vendor shall ensure that the participant or beneficiary receives the report no later than the 45th day after the end of each calendar quarter.

(D) The report must show for each qualified investment product:

(i) the amount of the participant's or beneficiary's deferrals and investment income in the product, including transfers;

(ii) the amount of applied product costs or surrender charges;

(iii) the date and amount of withdrawals during the reporting period; and

(iv) the current market value of the participant's or beneficiary's deferrals and investment income.

(2) Investments in life insurance products. The requirements of the preceding paragraph apply to investments of deferrals and investment income in life insurance products except:

(A) the report is due at least once each calendar year instead of after each calendar quarter; and

(B) the period covered by the report may be either the calendar year or the product year.

(3) Final reports. If a participant or beneficiary receives a lump-sum distribution, the prior plan [~~qualified~~] vendor or TPA from whom the lump-sum distribution is made shall issue a final report to the participant or beneficiary containing the information required in paragraph (1) of this subsection. The report must accompany the lump-sum distribution.

(c) Capital category reports. Once each quarter, or more frequently if appropriate, a prior plan [~~qualified~~] vendor which is a bank or savings and loan association shall report to the plan administrator that financial information regarding capital categories and risk-based ratios described in §87.7(i)[~~(j)~~] and (j)[~~(k)~~] of this title (relating to prior plan vendor participation [~~Vendor Participation~~]).

(d) Reports and remittance to the plan administrator.

(1) Frequency and coverage of reportsand payment of fees. Every vendor in the prior plan that has participant or beneficiary deferrals, investment income, and/or annuitized accounts must ensure that the plan administrator receives a report no later than the 15th day after the end of each calendar quarter. Every prior plan vendor must also remit any fees assessed to it by the plan administrator, no later than the 15th day after the end of each quarter. Every vendor must ensure that the plan administrator receives a special report at the end of the fiscal year (August 31st), no later than fifteen days past fiscal year end - September 15th, in addition to the normal quarterly reporting schedule. The report must be in the format specified in this subsection and must cover all transactions during the calendar quarter.

(2) Content of reports. For each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the vendor, the report required by this subsection must contain but is not limited to:

(A) the participant's or beneficiary's name, agency code and social security number(s);

(B) a list of the qualified investment products in which the participant's or beneficiary's deferrals and investment income have been invested even if the investment is in a product that is annuitized;

(C) the amount of monthly deferrals for the reporting period separated and listed per month;

(D) the interest and other income earned or lost during the reporting period through the investment of the deferrals and investment income;

(E) the amount of federal income tax withheld during the reporting period;

(F) the current market value of each participant's or beneficiary's deferrals and investment income in each qualified investment product, including annuitized accounts and, including, if appropriate, the number of shares and per share market value;

(G) the amount of fees that the prior plan [~~qualified~~] vendor charged during the reporting period;

(H) the amount transferred in and out as a result of a change of product within a company, identified separately by each internal transfer;

(I) the amount of each plan administrator directed transfer in or out; and

(J) the amount of each separate net distribution to the participant or beneficiaries, except that multiple payments that fall on the same day should be combined into one account for quarterly reporting purposes.

(K) a report specifying how the fees assessed to the prior plan vendor by the plan administrator were calculated and the asset base on which the fee was based.

(3) Format of reports.

(A) All reports must be in the format prescribed by the plan administrator and follow the DCP quarterly reporting specifications on a:

(i) 5 1/4 or 3 1/2 inch high quality PC diskette;

(ii) manual form; or

(iii) electronic file transfer - use of file transfer protocol (FTP), via the Internet or as an attachment to an electronic mail (E-mail).

(B) Only prior plan [~~qualified~~] vendors with less than fifty participants are eligible to report on a manual form.

(C) Before a prior plan [~~qualified~~] vendor may use a medium other than a manual form to file a quarterly report with the plan administrator, the vendor must submit a written request along with a electronic transfer file, or diskette to the plan administrator. The ERS must approve and make arrangements with the prior plan [~~qualified~~] vendor prior to testing the electronic file transfer [~~described in subparagraph (A)(v) of this paragraph~~]. The electronic transfer file, or diskette must be in the format and contain the information prescribed by the DCP reporting specifications and contain the information that the plan administrator requires including the items listed in paragraph (d)(2)(A) - (J) of this subsection. Failure to submit data in the specified format will result in the return of the media without processing. If the plan administrator determines that the electronic transfer file, or diskette is inadequate, the plan administrator shall ensure that the number of participants whose deferrals and investment income are invested at any given time in the vendor's qualified investment products does not exceed 49.

(D) The product types must be defined and coded as prescribed by the plan administrator and as in the DCP quarterly reporting specifications.

(E) If a participant or beneficiary has invested deferrals and investment income in two or more qualified investment products offered by the same prior plan [~~qualified~~] vendor and the products are of the same type, then the prior plan vendor must report a cumulative total of those deferrals and investment income.

(4) A prior plan vendor that fails to submit to the plan administrator any required report with an authorized signature or the assessed fee will be subject to [~~result in a~~] formal reprimand. After two [~~three~~] formal reprimands, a vendor may be expelled [~~is subject to suspension or expulsion~~] from the plan and subject to further liability as applicable.

(5) Late reports and/or fee payment.

(A) A report or fees are [~~is~~] delinquent if the plan administrator receives the report and/or fees after the due date.

(B) A report or fees that are [~~is~~] received before the due date but which are [~~is~~] returned to the vendor for completion or correction are [~~is~~] delinquent if the plan administrator does not receive the completed or corrected version of the report or correct amount of fees within 10 days after the original due date.

(e) Recordkeeping. A prior plan [~~qualified~~] vendor shall retain records concerning investments in each qualified investment product by each participant. The records must be retained until the expiration of the second year after the prior plan vendor has distributed all the participant's deferrals and investment income.

(f) Quarterly reconciliation. In accordance with §87.3(b)(3)(H) of this title (relating to Participation by State Agencies), an agency coordinator may be [~~is~~] responsible for balancing participant and beneficiary records and reconciling those records with the data provided by qualified vendors and the plan administrator. Prior plan vendors [~~Vendors~~] shall assist the plan administrator and state agencies with correcting and explaining any discrepancies. Failure to assist the plan administrator and state agencies with this reconciliation will be considered a rules violation, and the plan administrator may take appropriate action under §87.21 of this title (relating to Remedies).

§87.21. Remedies.

(a) Remedies for violations of the sections in this chapter.

(1) The plan administrator may cancel a product contract, change agreement, participation agreement, exercise any available remedy under applicable law, or combination of the preceding when a prior plan [~~qualified~~] vendor uses methods that violate the sections in this chapter to obtain investments in the prior plan vendor's qualified investment products.

(2) The plan administrator may expel a prior plan [~~qualified~~] vendor from the plan or suspend its right to receive new deferrals and investment income when the prior plan vendor or revised plan vendor violates the sections in this chapter.

(3) The plan administrator may prohibit an employee of a prior plan [~~qualified~~] vendor or a vendor representative from further solicitation or acceptance of deferred compensation business when the employee or representative violates the sections in this chapter.

(4) If a prior plan [~~qualified~~] vendor does not notify the plan administrator by no later than the 30th day after a change in vendor status, the plan administrator shall expel the prior plan vendor. For the purpose of this paragraph, the term "change in vendor status" means the events covered by §87.7(e)[~~(f)~~] of this title (relating to prior plan vendor participation [~~Vendor Participation~~]).

(5) The plan administrator may [~~shall suspend or~~] expel a prior plan [~~qualified~~] vendor that does not file reports [~~a report~~] with and remit all fees it owes to the plan administrator for any two quarters in a 12-month period.

(6) The plan administrator may [~~shall suspend or~~] expel a non-filer that files two or more reports or remits two or more fee payments to the plan administrator after the due date specified within §87.19(d)(1) [~~§87.19(c)(1)~~] of this title (relating to Reporting and Record Keeping by prior plan vendors [~~Qualified Vendors~~]) within a 12-month period.

(7) The plan administrator may [~~suspend or~~] expel a prior plan [~~qualified~~] vendor who fails to comply with the DCP quarterly reporting specifications and rules on reporting for any two quarters within a 12-month period.

(8) The plan administrator may [~~suspend or~~] expel a prior plan [~~qualified~~] vendor whose failure to comply with the requirements in §87.7(i)[~~(j)~~] or (j)[~~(k)~~] of this title (relating to prior plan vendor participation and to §87.17 of this title (relating to Distributions) [~~Vendor Participation)~~] was:

(A) intentional;

(B) caused by a reckless disregard of the requirements;

(C) due to gross negligence; or

(D) due to negligence.

(9) For violations not specifically mentioned in this subsection, the plan administrator may reprimand, suspend, expel, or otherwise discipline a prior plan [~~qualified~~] vendor, employee of a prior plan [~~qualified~~] vendor, or vendor representative.

(10) The plan administrator may suspend or expel a prior plan vendor who fails to remit to the plan administrator plan fees by the due date.

(11) [~~(10)~~] The plan administrator may determine the effective date of an expulsion, termination, prohibition, or cancellation when the plan administrator:

(A) expels a prior plan [~~qualified~~] vendor or terminates a prior plan [~~qualified~~] vendor's participation in the plan;

(B) prohibits a vendor representative or an employee of a prior plan [~~qualified~~] vendor from further solicitation or acceptance of deferred compensation business; or

(C) cancels a product contract, change agreement, participation agreement, or combination of the preceding.

(12) [~~(11)~~] When the plan administrator suspends a prior plan [~~qualified~~] vendor's participation in the plan, the plan administrator may determine the effective date and termination date of the suspension.

(b) Transfers from prior plan [~~qualified~~] vendors that violate the sections in this chapter.

(1) If the plan administrator expels a prior plan [~~qualified~~] vendor from the plan, the plan administrator shall initiate a transfer of all deferrals and investment income from the prior plan vendor in accordance with §87.15(c) and (d) of this title (relating to Transfers).

(2) If the plan administrator cancels a product contract, change agreement, participation agreement, or combination of the preceding, the plan administrator shall take the action specified in paragraph (1) of this subsection except the transfers must be limited to the deferrals and investment income governed by the contracts or agreements.

(3) If the plan administrator suspends a prior plan [~~qualified~~] vendor from participation in the plan, the plan administrator may take the actions specified in paragraph (1) of this subsection. Whether the plan administrator takes those actions or not, the prior plan [~~qualified~~] vendor shall continue to file the reports and pay fees required by the sections in this chapter. The plan administrator shall order the expulsion of a suspended vendor that does not file the required reportsor pay the required fees.

(4) If a prior plan [~~qualified~~] vendor is expelled from the plan, the prior plan vendor may not apply for reinstatement in the plan.

(5) If the plan administrator suspends a prior plan [~~qualified~~] vendor, an employee of a prior plan [~~qualified~~] vendor, or a vendor representative, the suspension shall last for at least 24 months after the effective date of the suspension.

(6) If the plan administrator expels a prior plan [~~qualified~~] vendor for violating the provisions of this chapter, the expelled vendor may not charge or permit to be charged a fee or penalty to participants, the plan or plan administrator for transfers made after the notice of termination.

(c) Continuation of life insurance coverage.

(1) This subsection applies when the plan administrator terminates the participation in the plan of a life insurance company or life insurance product.

(2) In this subsection, the term "terminated life insurance product" means a life insurance product that is no longer a qualified investment product because of a termination specified in paragraph (1) of this subsection.

(3) A participant whose deferrals and investment income were invested in a terminated life insurance product may continue life insurance coverage with the insurance company offering the terminated life insurance product.

(4) If an insurance company has not been terminated from participation in the plan, this paragraph applies. The company must offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company shall offer continuing coverage in:

(A) an existing qualified investment product that is comparable to the terminated life insurance product; and

(B) a life insurance product that is not a qualified investment product but is comparable to the terminated life insurance product.

(5) If an insurance company has been terminated from participation in the plan, this paragraph applies. The company shall offer continuing life insurance coverage to each participant whose deferrals and investment income were invested in a terminated life insurance product offered by the company. The insurance company must offer continuing coverage in a life insurance product that is comparable to the terminated life insurance product in which the participant's deferrals and investment income were invested.

(6) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the product directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(7) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the prior plan [~~qualified~~] vendor written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the termination of participation in the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(8) When a participant elects to continue life insurance coverage, the life insurance company offering the product via which the participant is continuing coverage may not:

(A) refuse to continue the life insurance;

(B) require a postponement or an interruption in coverage for any length of time;

(C) require the participant to provide evidence of insurability;

(D) require the participant to apply for coverage;

(E) discriminate in any manner against the participant because the plan administrator terminated the participation in the plan of the company or its life insurance product;

(F) treat the participant differently than the company would treat a non-participant with the same life insurance coverage; or

(G) increase the premiums charged to the participant solely because the participant elected to continue coverage.

(9) An insurance company must ensure that each participant entitled to continue life insurance coverage under this subsection receives written notice of the participant's right by no later than the 30th day after the plan administrator mails notice to the company of a termination described in paragraph (1) of this subsection.

(10) If an insurance company does not comply with paragraph (9) of this subsection, then a participant may exercise the participant's right to continue life insurance coverage up to the 60th day after

the insurance company actually mails written notice to the participant containing a full explanation of the participant's rights.

(d) Disciplinary procedures.

(1) The plan administrator may act without a prior hearing when necessary to remedy or protect either the plan or participants from an imminent or actual violation of the sections in this chapter.

(2) The plan administrator may refer violations of the sections in this chapter or noncompliance with a prior plan [~~qualified~~] vendor's contractual obligations to the attorney general for appropriate action.

(e) A prior plan [~~qualified~~] vendor's failure to act.

(1) A prior plan [~~qualified~~] vendor shall reimburse the State of Texas, or effective January 1, 1999, the trust, for a financial loss that results from the vendor's failure to process a request for a transfer in a reasonable time, not to exceed 30 days.

(2) A prior plan [~~qualified~~] vendor shall reimburse a participant for a financial loss that results from the prior plan vendor's failure to process a distribution or transfer in a reasonable time, not to exceed 30 days.

(f) Misrepresentations of qualified investment products.

(1) A prior plan [~~qualified~~] vendor is responsible for an intentional or unintentional misrepresentation or misstatement of any attribute of the vendor's qualified investment products by an employee of the prior plan vendor or by a vendor representative. This paragraph applies even if the prior plan vendor did not authorize the misrepresentation or misstatement.

(2) The plan administrator may bind a prior plan [~~qualified~~] vendor to a misrepresentation or misstatement by the prior plan vendor's employees or [~~vendor~~] representatives of an attribute of the prior plan vendor's qualified investment products if the attribute as misrepresented or misstated is more advantageous to the participant than the attribute would be if it had been accurately depicted.

(g) Alternative action by the plan administrator.

(1) This subsection applies when a section in this chapter requires or permits the plan administrator to terminate a prior plan [~~qualified~~] vendor's participation in the plan or expel a prior plan [~~qualified~~] vendor from the plan.

(2) In lieu of imposing the termination or expulsion, the plan administrator may:

(A) prohibit a prior plan [~~qualified~~] vendor from receiving additional deferrals and investment income;

(B) discipline a prior plan [~~qualified~~] vendor;

(C) impose special requirements on a prior plan [~~qualified~~] vendor;

(D) take other appropriate action; or

(E) perform a combination of the actions listed in subparagraphs (A)-(D) of this paragraph.

(3) Paragraph (2) of this subsection applies only if the plan administrator determines that alternative action is in the best interests of the plan.

(h) Violations of state insurance or securities laws. The plan administrator shall refer possible violations of state insurance or securities laws or regulations to the Texas Department of Insurance or the State Securities Board for appropriate action.

§87.25. Transition.

(a) This subsection applies only to activities, investment products, prior plan vendors' participation in the plan, and documents that the plan administrator approved before May 7, 1990. A prior plan [~~qualified~~] vendor must comply with the substantive requirements of the sections in this chapter by July 1, 1990, to the extent that compliance with the requirements is a precondition for obtaining the plan administrator's approval of activities, investment products, prior plan vendors' participation in the plan, or documents. Compliance is required notwithstanding the plan administrator's approval of the activities, investment products, prior plan vendors' participation in the plan, or documents before the May 7, 1990. If a prior plan [~~qualified~~] vendor does not comply by July 1, 1990, the plan administrator shall take appropriate disciplinary action.

(b) A prior plan [~~qualified~~] vendor is deemed to consent to each provision and requirement in the sections of this chapter unless the plan administrator receives written notice from the prior plan vendor by no later than May 18, 1990, that the prior plan vendor is terminating its participation in the plan effective no later than July 17, 1990. If the plan administrator timely receives the notice from a prior plan vendor:

(1) the prohibition against the charging of fees for voluntary termination from the plan in §87.7(f)[~~(g)~~] of this title (relating to prior plan vendor participation [~~Vendor Participation~~]) does not apply to the prior plan vendor's qualified investment products; and

(2) §87.7(f)[~~(g)~~] of this title (relating to prior plan vendor participation [~~Vendor Participation~~]) does not provide participants with the right to continue their life insurance coverage, although the terms of a particular life insurance product or state or federal law may provide the participants with the right to continue their insurance coverage.

§87.31. Revised Plan.

(a) Applicability.

(1) This section applies to the State of Texas Deferred Compensation Plan as revised and adopted by the Employees Retirement System of Texas effective September 1, 2000, and filed with the Secretary of State. The plan as revised and adopted is incorporated in this section by reference and is referred to in this section as "the revised plan." Copies of the revised plan may be obtained upon request.

(2) This section also applies to the State of Texas Deferred Compensation Plan as adopted by the Employees Retirement System of Texas effective January 1, 1991, and as amended prior to adoption of the revised plan. The 1991 plan is referred to in this section as "the prior [~~previous~~] plan." Except as otherwise provided in this section, the provisions of §87.1 through 87.29 of this title continue to apply to participation agreements, distribution agreements, and prior plan vendor contracts entered into pursuant to provisions of the prior [~~previous~~] plan.

(3) This section takes effect September 1, 2000 and shall apply to deferrals and transfers which take place on or after September 1, 2000.

(b) Administration of the revised plan.

(1) The plan administrator shall administer the revised plan in the manner provided in the plan and §87.3 of this title (relating to Administrative and Miscellaneous Provisions).

(2) The provisions of §87.15 of this title (relating to Transfers) shall apply to the authority of the plan administrator to make transfers under the revised plan. Limitations on the plan administrator imposed in §87.7(b)(1) (relating to prior plan vendor participation [~~Vendor Participation~~]) and §87.9(b)(1) (relating to Investment Products) of this title shall not apply to administration of the revised plan.

(3) A participant shall select a single manner of distribution and a single date of distribution of all of the participant's investments in the revised plan.

(4) The plan administrator may assess a fee if necessary to cover the costs of administering the revised plan.

(5) If a participant has not selected an investment product to receive deferrals, the deferrals shall be invested in a [~~money market account or such other~~] product selected by the plan administrator in its sole discretion. Balances in the revised plan may not be transferred to the prior [~~previous~~] plan.

(6) Deferrals and transfers to the revised plan shall be accepted by the revised plan beginning on the effective date of this section.

(c) Change of name or legal status by a revised plan vendor. If a revised plan vendor's name or legal status changes through merger, sale, dissolution, or any other means, the revised plan vendor must notify the plan administrator in writing no later than the 30th day after the change. The notice must contain a detailed description of the transaction that causes the change. If a notice requirement in a contract between the revised plan vendor and the plan administrator is different than required in this paragraph, then the notice should be made in accordance with the contractual provision.

(d) [~~(c)~~] Transition from the prior [~~previous~~] plan.

(1) On the effective date of this section, the plan administrator shall cease to accept deferrals to investment products approved under the prior [~~previous~~] plan, with the exception of life insurance products, to which deferrals may be continued as necessary to maintain the life insurance.

(2) A participant with an account balance in investment products approved under the prior [~~previous~~] plan may elect to maintain the balance in those products or to transfer the balance to one or more products approved under the revised plan. Annuitized and life insurance products may not be transferred to the revised plan. Balances transferred to a product approved under the revised plan may not be transferred to a product approved under the prior [~~previous~~] plan. Transfer of funds to the revised plan that are in distribution must be paid out over a uniform term. A participant may not transfer funds from one prior plan vendor [~~qualified vendor~~] in the prior [~~previous~~] plan to another prior plan [~~qualified~~] vendor in the prior [~~previous~~] plan.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, the plan administrator may require that an account balance in an investment product be transferred from such product approved under the prior [~~previous~~] plan to a product(s) approved under the revised plan if the plan administrator determines it is in the best interests of the plan.

(4) On the effective date of this section, prior plan vendors and vendor representatives of qualified investment products under the prior [~~previous~~] plan shall cease solicitation of business for such products from participants and employees.

(5) Distribution agreements for investment products in the prior [~~previous~~] plan filed on or after the effective date of this section shall use the same beginning date, duration and frequency for all prior plan vendors and investment products.

(6) A beneficiary designation form filed with the administrator of the revised plan applies only to those funds that have been transferred to the revised plan.

(7) Termination and resumption of deferrals.

(A) An employee may voluntarily terminate additional deferrals by providing appropriate notice to the TPA.

(B) An employee who has terminated additional deferrals, but who has not separated from service, may resume deferrals by re-enrolling in the revised plan.

(e) Audits. The plan administrator or its designee may audit or cause an audit to be performed of a revised plan vendor related to the vendor's participation in the plan.

§87.33. The Economic Growth and Tax Relief and Reconciliation Act.

(a) The Economic Growth and Tax Relief and Reconciliation Act of 2001 (referred to as "EGTRRA" and/or "Act") allows a plan administrator to amend eligible 457 deferred compensation plans to provide additional benefits to participants. The following resolutions set forth the decisions and provisions effective January 1, 2002.

(b) Applicability.

(1) This section applies to the State of Texas Deferred Compensation 457 Plan as revised and adopted by the Employees Retirement System of Texas effective September 1, 2000, and filed with the Secretary of State. The plan as revised and adopted is incorporated into this section. Copies may be obtained upon request.

(2) This section also applies to the State of Texas Deferred Compensation 457 Plan adopted by the Employees Retirement System of Texas effective January 1, 1991, and as amended prior to adoption of the revised plan. The 1991 plan is referred to in this section as the "prior [~~previous~~] plan." Except as otherwise provided in this section, the provisions of §§87.1 through 87.31 of this title continue to apply to participation agreements, distribution agreements, and prior plan vendor contracts entered into pursuant to applicable provisions of the prior [~~previous~~] plan.

(3) This section takes effect January 1, 2002 and shall apply to deferrals, transfers/rollovers and distributions that take place on or after January 1, 2002.

(c) Administration of the revised plan. The plan administrator shall administer the revised plan in the manner provided in the plan and §87.3 of this title (relating to Administrative and Miscellaneous Provisions).

(d) Catch-up contributions during the three years prior to normal retirement age are increased to twice the applicable deferral limit.

(e) A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with Internal Revenue Code §414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant who elects to defer contributions under the normal catch-up provisions may not also defer under the special catch-up and Internal Revenue Code §414(v).

(f) Plan Loans - The plan administrator is authorized to implement procedures to establish a loan program for the revised plan. Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior [~~previous~~] plan must transfer those balances to the revised plan in order to qualify for a plan loan.

(g) Distributions.

(1) Change or Cancellation of Irrevocable Distribution Elections - A participant or a beneficiary of a participant who

previously filed an irrevocable distribution election under the prior [previous] plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(2) Purchase of Service - A participant may request a trustee-to-trustee transfer of assets from the prior [previous] plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in Internal Revenue Code §415(n)(3)(A)) under such plan or a repayment to which Internal Revenue Code §415 does not apply by reason of subsection (k)(3) thereof.

(3) The TPA and prior plan vendors [Vendors] who maintain participant account balances in the prior [previous] plan shall provide the required Internal Revenue Code §402(f) safe harbor notice to all 457 plan participants prior to the payment of an eligible rollover distribution.

(h) Cessation of Deferrals upon Emergency Withdrawal - If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the Texa$aver 401(k) plan for six months following the approval. Participants who were required to suspend deferrals as a result of an emergency withdrawal and whose suspension has equaled or exceeded 6 months as of January 1, 2002 may elect to resume contributions by re-enrolling in the revised plan.

(i) Qualified Domestic Relations Orders - Upon receipt of a certified copy of a qualified domestic relations order, the plan administrator may distribute to an alternate payee in a lump sum immediate distribution, the proceeds as directed by the order. The plan administrator shall develop procedures for the implementation of this section.

(j) The normal maximum amount of deferrals is increased to the lesser of $13,000M [$12,000] (as periodically adjusted in accordance with Internal Revenue Code §457(e)(15)) or 100% of a participant's includible compensation.

(k) At a participant's request, the plan administrator shall process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

§87.34. Independent Investment Advice.

(a) The plan administrator may offer independent investment advice through a qualified independent advisor in accordance with applicable federal regulations.

(b) Payment for independent investment advice is allowed only from the revised plan.

(c) [(b)] Applicability.

(1) This section applies to the Texa$aver 401(k) Plan and Texa$aver 457 Plan, as amended and adopted by the Employees Retirement System of Texas.

(2) The investment advisor(s) used by the plan administrator must meet reasonable qualifications, and agree to act as a fiduciary on behalf of the participants.

(3) Payments for investment advice under this rule may only be made when the plan administrator has determined that it considers the payment to be a reasonable plan expense.

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 July 12, 2004.

TRD-200404491
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 22, 2004
For further information, please call: (512) 867-7125

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WITHDRAWN RULES

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER C. BOARD CONTRACTING GUIDELINES

40 TAC §§801.57 - 801.60

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new sections, submitted by the Texas Workforce Commission have been automatically withdrawn. The new sections as proposed appeared in the January 9, 2004 issue of the *Texas Register* (29 TexReg 344).

Filed with the Office of the Secretary of State on July 13, 2004.

TRD-200404502

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §§20.1, 20.3, 20.10, 20.16, 20.20, and 20.22 in Chapter 20 Subchapters A, B and C, concerning cotton pest control, without changes to the proposal published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5697). The amendments are adopted with the intent to clarify certain terminology and formalize current practices. The amendments are also adopted to provide cotton stalk destruction dates more appropriate to local growing conditions, increasing compliance and streamlining extension procedures. The amendments further benefit the public by minimizing the risk of artificial re-infestation of a restricted area by boll weevils, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Sections 20.1, 20.3, 20.10, 20.16, 20.20, and 20.22 are adopted without changes and will not be republished.

Terms in §20.1 have been eliminated or modified for clarification purposes. Language has been added to §20.3 (b)(1) related to violations and enforcement actions to provide for current department practices and procedures. The amendment to §20.10 corrects the scientific name for the boll weevil. The amendments to §20.16 clarify the exceptions to restrictions. The boundaries for Zone 2, Areas 3 and 4, are amended in §20.20 (b) (4) in response to a request from that zone's Cotton Producers Advisory Committee (CPAC). Stalk destruction requirements in §20.22 (a) for Zone 9 are changed at the request of their CPAC to require only shredding and to establish a stalk destruction deadline of February first. The figure containing the stalk destruction deadlines has been simplified by the deletion of planting dates, which are not set for many zones and are not used for regulatory purposes.

Language in §20.22 related to alternative methods of destruction has been eliminated because past rule changes have set non-hostability as the standard for destruction in zones 1-8, a change that makes this option irrelevant for those zones. Any alternative methods of destruction in zones 9 and 10 will be considered by the CPAC and appropriate rule changes can be made at that time. In §20.22 (b) (6), re-growth is included as a basis for individual extensions for cotton that had been previously brought into compliance with stalk destruction requirements.

The department is adopting a new §20.22 (c) to provide for current department practices and procedures. This new section gives the department the option of suspending enforcement activities in any zone, area, or county when weather or other conditions (including possible homeland security issues) temporarily prevent enforcement activities. Changes in §20.22(d) are made to clarify the cut-off date for the accrual of penalties.

Comments were received from the South Texas Cotton and Grain Association, Inc. (STCGA) and Cotton and Grain Producers of the Lower Rio Grande Valley, Inc. The STCGA indicated support for changes intended to make the rules consistent with the new criterion that defines cotton stalk destruction to mean "rendered non-hostable" and also supported moving the northern part of Aransas County to Zone 2, Area 4. STCGA furthermore recommended that §20.22 (d) be changed to provide for a host fee period beginning on the stalk destruction date and extending until February 1 of the following year. The Lower Rio Grande Valley, Inc. requested additions to §20.22 (d) specifying that cotton may not be planted before February 1 of each year to maintain a host free period. These requested changes are not included in the sections as adopted because the department believes these are substantive changes requiring notice to affected entities and individuals and an opportunity for public comment prior to adoption. In addition, the recommendation to specify that cotton not be planted before February 1 of each year is not included in the rule adoption because February 1 may not be an appropriate planting date for all zones across the state. The department will, however, take the comments under consideration for future rulemaking.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1, §20.3

The amendments are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

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 July 12, 2004.

TRD-200404481

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 1, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-4075

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SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.10, §20.16

The amendments are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

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 July 12, 2004.

TRD-200404482
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 1, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-4075

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SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.20, §20.22

The amendments are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area.

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 July 12, 2004.

TRD-200404483
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 1, 2004
Proposal publication date: June 11, 2004
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.17

The Texas Department of Housing and Community Affairs (the Department) adopts new §1.17, without changes, as published in the May 28, 2004 issue of the *Texas Register* (29 TexReg 5225), concerning Alternative Dispute Resolution and Negotiated Rulemaking.

The purpose of this new section is, in accordance with Chapter 2306.082, Texas Government Code, to implement a policy to encourage the use of appropriate alternative dispute resolution procedures under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in the resolution of disputes under the Department's jurisdiction and the use of negotiated rulemaking procedures under Chapter 2008, Texas Government Code, for the adoption for Department rules.

No comments were received concerning this new rule.

The new section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

The new section affects no other code, article or 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 July 9, 2004.

TRD-200404474
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 29, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-4595

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CHAPTER 35. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.10

The Texas Department of Housing and Community Affairs (the "Department") adopts, with changes, the proposed new §§35.1 - 35.10, concerning the Multifamily Housing Revenue Bond Rules, as published in the May 28, 2004, issue of the *Texas Register*

(29 TexReg 5227). These new sections are proposed in order to implement changes that will effectively improve the 2005 Private Activity Bond Program.

The scope of the public comment concerning the Multifamily Housing Revenue Bond Rules pertains to the following sections:

SUMMARY OF COMMENT RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE TEXAS REGISTER AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE MULTIFAMILY HOUSING REVENUE BOND RULES.

§35.6(d)(4) - Pre-Application Scoring Criteria; Quality and Amenities

Comment:

Comments from Vinson and Elkins suggested that the following be added: If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Substitutions in amenities will be allowed as long as the overall score is not affected

Department Response:

The Department currently includes this language in §35.6(g) - Evaluation Criteria. To clarify which section the language pertains to, it will be restated here.

§35.6(d)(4) - Quality and Amenities (maximum 34 points) Acquisition / Rehab will receive double points not to exceed 34 points). (If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Substitutions in amenities will be allowed as long as the overall score is not affected.)

Board Response:

Department Response Accepted

§35.6(d)(5) - Pre-Application Scoring Criteria; Tenant Services

Comment:

Comments from Vinson and Elkins suggested the following be added: Tenant Services shall include only direct costs (tenant service contract amount, supplies for services, internet connections, initial cost of computer equipment, etc…). Indirect costs such as overhead and utility allocations may not be included.

Department Response:

The Department agrees and will add the language to clarify what costs can be included in the tenant service expense.

Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc…). Indirect costs such as overhead and utility allocations may not be included).

(A) $10.00 per Unit per month (10 points);

(B) $7.00 per Unit per month (5 points);

(C) $4.00 per Unit per month (3 points).

Board Response:

Department Response Accepted.

§35.6(d) - Pre-application Scoring Criteria; Acquisition / Rehabilitation Developments

Comment:

Suggestion to giving acquisition / rehab developments ten (10) points and allowing demolition of old buildings and new construction of the same number of units if allowed under current local codes or less units in compliance with local codes to be considered under the definition of acquisition / rehab.

Department Response:

The Department agrees this would be a good addition to further the preservation of at-risk developments.

Acquisition / Rehabilitation Developments will receive ten (10) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 250 total units).

Board Response:

Department Response Accepted. §35.6(d)(4) - Pre-application Scoring Criteria; Quality and Amenities

Comment / Department Response:

Staff recommended an administrative change to the award of points for qualities and amenities.

Quality and Amenities ((maximum 34 points) Acquisition / Rehab (with no demolition / new construction) will receive double points not to exceed 34 points). Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows:

Board Response:

Department Response Accepted.

The adopted new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The adopted new sections affect no other code, article or statue.

§35.1. Introduction.

The purpose of this Chapter 35 is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2005 Private Activity Bond Program Year. The rules and provisions contained in Chapter 35, of this title are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a tax credit allocation should consult the Department's Qualified Allocation Plan and Rules ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted.

§35.2. Authority.

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code (the "Act"). All Bonds issued by the Department must conform to the requirements of the Act. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are

issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to the Act, Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this chapter).

§35.3. Definitions.

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

(1) Applicant--means any Person or Affiliate of a Person who is a member of the General Partner, who files a Pre-Application or full Application with the Department requesting the Department issue Bonds to finance a Development.

(2) Application--means an Application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material.

(3) Board--means the Governing Board of the Department.

(4) Bond--means an evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.

(5) Code--means 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 by the United States Department of the Treasury or the Internal Revenue Service.

(6) Development--means property or work or a development, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Department for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, or use by individuals and families of Low Income and Very Low Income and Families of Moderate Income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewage facilities, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community, and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances; and

(B) multifamily dwellings in rural and urban areas.

(7) Development Owner--means an Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(8) Eligible Tenants--means

(A) individuals and families of Extremely Low, Very Low and Low Income,

(B) Families of Moderate Income (in each case in the foregoing subparagraph (A) and (B) of this paragraph as such terms are defined by the Issuer under the Act), and

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(9) Extremely Low Income--means the income received by an individual or family whose income does not exceed thirty percent (30%) of the area median income or applicable federal poverty line, as determined by the Act.

(10) Family of Moderate Income--means a family:

(A) that is determined by the Board to require assistance taking into account

(i) the amount of total income available for the housing needs of the individuals and family,

(ii) the size of the family,

(iii) the cost and condition of available housing facilities,

(iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing, and

(v) standards established for various federal programs determining eligibility based on income; and

(B) that does not qualify as a family of Low Income.

(11) Ineligible Building Type--as defined in the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted.

(12) Institutional Buyer--means

(A) an accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §§230.501(a)(4) through (6)) or

(B) a qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A).

(13) Low Income--means the income received by an individual or family whose income does not exceed eighty percent (80%) of the area median income or applicable federal poverty line, as determined by the Act.

(14) Land Use Restriction Agreement (LURA)--means 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 law, including this title, the Act and Section 42 of the Code.

(15) Owner--means an Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(16) Persons with Special Needs--means persons who

(A) are considered to be disabled under a state or federal law,

(B) are elderly, meaning 60 years of age or older or of an age specified by an applicable federal program,

(C) are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or

(D) are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph above and meet the income guidelines established by the Board.

(17) Private Activity Bonds--means any Bonds described by §141(a) of the Code.

(18) Private Activity Bond Program Scoring Criteria--means the scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(d) of this title.

(19) Private Activity Bond Program Threshold Requirements--means the threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.6(c) of this title.

(20) Program--means the Department's Multifamily Housing Revenue Bond Program.

(21) Proper Site Control--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.

(22) Property--means the real estate and all improvements thereon, whether currently existing or proposed to be built thereon in connection with the Development, and including all items of personal property affixed or related thereto.

(23) Qualified 501(c)(3) Bonds--means any Bonds described by §145(a) of the Code.

(24) Tenant Income Certification--means a certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. 1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.

(25) Tenant Services--means social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §601 et seq.), and other similar services.

(26) Tenant Services Program Plan--means the plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(27) Trustee--means a national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

(28) Unit--means 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.

(29) Very Low Income--means the income received by an individual or family whose income does not exceed sixty percent (60%) of the area median income or applicable federal poverty line as determined under the Act.

§35.4. Policy Objectives & Eligible Developments.

The Department will issue Bonds to finance the preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income.

§35.5. Bond Rating and Investment Letter.

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

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

§35.6. Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will score and rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score. This ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, the number of points awarded

for Quality and Amenities for the Development. If a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. The Private Activity Bond Program Threshold Requirements will be posted on the Department's website. After scoring, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's intent to issue Bonds (the "inducement resolution") with respect to the Development. After Board approval of the inducement resolution, the scored and ranked Applications will be submitted to the Texas Bond Review Board for its lottery processing. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest scored and ranked Application as previously determined by the Department. The criteria by which a Development may be deemed to be eligible or ineligible are explained below in subsection (g) of this section, entitled Evaluation Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website. The pre-application shall consist of the following information:

(1) Completed Uniform Application forms in the format required by the Department;

(2) Texas Bond Review Board's Residential Rental Attachment;

(3) Relevant Development Information;

(4) Public Notification Information;

(5) Certification and agreement to comply with the Department's rules;

(6) Agreement of responsibility of all cost incurred;

(7) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;

(8) Evidence that the Applicant and principals are registered with the Texas Secretary of State, or if the Applicant has not yet been formed, evidence that the name of the Applicant is reserved with the Secretary of State;

(9) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;

(10) Documentation of non-profit status if applicable; Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals; Corporate resumes and individual resumes of the Applicant and any principals;

(11) A copy of an executed earnest money contract between the Applicant and the seller of the Property. This earnest money contract must be in effect at the time of submission of the application and expire no earlier than December 1 of the year preceding the applicable program year. The earnest money contract must stipulate and provide for the Applicant's option to extend the contract expiration date through March 1 of the program year, subject only to the seller's receipt of additional earnest money or extension fees, so that the Applicant will have site control at the time a reservation is granted. If the Applicant owns the Property, a copy of the recorded warranty deed is required;

(12) Evidence of zoning appropriate for the proposed use, application for the appropriate zoning or statement that no zoning is required;

(13) A local map showing the location of the proposed Property site;

(14) A boundary survey or subdivision plat which clearly identifies the location and boundaries of the subject Property;

(15) Name, address and telephone number of the Seller of the Property;

(16) Construction draw and lease-up proforma for Developments involving new construction;

(17) Past two years' operating statements for existing Developments;

(18) Current market information which includes rental comparisons;

(19) Documentation of local Section 8 utility allowances;

(20) Verification/Evidence of delivery of federal, state, and local community notifications;

(21) Self-Scoring Criteria; and

(22) Such other items deemed necessary by the Department per individual application.

(c) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected in the Application. Prequalification Assumptions:

(A) Development Feasibility:

(i) Debt Coverage Ratio must be greater than or equal to 1.10;

(ii) Annual Expenses must be at least $3,800 per Unit or $3.75 per square foot;

(iii) Deferred Developer Fees are limited to 80% of Developer's Fees;

(iv) Contractor Fee are limited to 6% of direct costs plus site work cost;

(v) Overhead are limited to 2% of direct costs plus site work cost;

(vi) General Requirements are limited to 6% of direct costs plus site work cost;

(vii) Developer Fees cannot exceed 15% of the project's Total Eligible Basis

(B) Construction Costs Per Unit Assumption. The acceptable range is $47 to $61 per Unit (Acquisition / Rehab developments are exempt from this requirement);

(C) Interest Rate Assumption. 6.00% for 30 year financing and 6.75% for 40 year financing;

(D) Size of Units (Acquisition / Rehab developments are exempt from this requirement);

(i) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units.

(ii) Two bedroom Unit must be greater that or equal to 900 square feet for family and 750 square feet for senior Units.

(iii) Three bedroom Unit must be greater than or equal to 1,000 square feet for family.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through 12/1/04 with option to extend through 3/1/05;

(4) Previous Participation and Authorization to Release Credit Information (located in the uniform application);

(5) Current Market Information (must support affordable rents);

(6) Completed TDHCA Uniform Application and application exhibits;

(7) Completed Multifamily Rental Worksheets;

(8) Public Notification Information (see application package);

(9) Relevant Development Information (see application package);

(10) Completed 2004 Bond Review Board Residential Rental Attachment;

(11) Signed letter of Responsibility for All Costs Incurred;

(12) Signed MRB Program Certification Letter;

(13) Evidence of Paid Application Fees ($1,000 to TDHCA, $1,500 to Vinson and Elkins and $5,000 to Bond Review Board);

(14) Boundary Survey or Plat;

(15) Local Area map showing the location of the Property and Community Services / Amenities within a three (3) mile radius;

(16) Utility Allowance from the Appropriate Local Housing Authority;

(17) Organization Chart with evidence of Entity Registration or Reservation with the Secretary of State; and

(18) Required Notification. Evidence of 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 each official. Each notice must include the information required for "Community Notification" within the Application Package. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed below, then the QAP and Rules will override the notification process listed below):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development;

(F) City and County Clerks (Evidence must be provided that a letter, meeting the requirements of the "Clerk Notification" letter in the application materials, was sent to the city clerk and county clerk no later than August 9, 2004. A copy of the return letter from the city and county clerks must be provided); and

(G) Neighborhood Organizations on record with the state or county whose boundaries contain the development (All entities identified in the letters from the city and county clerks 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 letter is received from the city or county clerk by seven (7) days prior to the date of Application submission, the Applicant must submit a statement attesting to the fact that no return letter was received. If the Applicant has knowledge of neighborhood organizations on record with the state or county within whose boundaries the development is located, written notification must be provided to them. If the Applicant has no knowledge of such neighborhood organizations within whose boundaries the Development is located, they must submit a statement to that effect with the Application).

(d) Pre-Application Scoring Criteria.

(1) Construction Cost Per Unit includes: site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to $60 per square foot (1 point) (Acquisition / Rehab will automatically receive (1 point)).

(2) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family and must be greater than or equal to 750 square foot for elderly (5 points). (Acquisition / Rehab developments will automatically receive 5 points).

(3) Period of Guaranteed Affordability for Low Income Tenants. Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).

(4) Quality and Amenities ((maximum 34 points) Acquisition / Rehab (with no demolition / new construction) will receive double points not to exceed 34 points)). (If there are changes to the Application prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Substitutions in amenities will be allowed as long as the overall score is not affected). Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows:

(A) Washer / Dryer Connections (1 point);

(B) Microwave Ovens (in each Unit) (1 point);

(C) Storage Room (outside the Unit) (1 point);

(D) Covered Parking (at least one per Unit) (3 points);

(E) Garages (equal to at least 35% of Units) (5 points);

(F) Ceiling Fans (living rooms and bedrooms) (1 point);

(G) Ceramic Tile Flooring (entry way and all bathroom) (2 points);

(H) 75% or Greater Masonry (includes rock, stone, brick, stucco and cementious board product; excludes EFIS) (5 points);

(I) Playground and Equipment or Covered Community Porch (3 points);

(J) BBQ Grills and Tables (one each per 50 Units) or Walking Trail (minimum length of 1/4 mile) (3 points);

(K) Full Perimeter Fencing and Gated (3 points);

(L) Computers with internet access / Business Facilities (8 hour availability) (2 points);

(M) Game Room or TV Lounge (2 points);

(N) Workout Facilities or Library (with comparable square footage as workout facilities) (2 points).

(5) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc…). Indirect costs such as overhead and utility allocations may not be included).

(A) $10.00 per Unit per month (10 points);

(B) $7.00 per Unit per month (5 points);

(C) $4.00 per Unit per month (3 points).

(6) Zoning appropriate for the proposed use or no zoning required (appropriate zoning for the intended use must be in place at the time of application submission date, August 30, 2004, in order to receive points) (5 points).

(7) Proper Site Control (as defined in §35.3(21) of this title control through 12/01/04 with option to extend through 03/01/05 and all information correct at the time of application submission date, August 30, 2004, in order to receive points) (5 points).

(8) Development Support / Opposition (Maximum net points of +12 to -12. Each letter will receive a maximum of +1.5 to -1.5. All letters received by 5:00 PM, October 22, 2004 will be used in scoring).

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points).

(9) Penalties for Missed Deadlines in the Previous Year's Bond and / or Tax Credit program year. (This includes approved and used extensions) (-1 point with maximum 3 point deduction).

(10) Local Political Subdivision Development Funding Commitment that enables additional Units for the Very Low Income (CDBG, HOME or other funds through local political subdivisions) (must be greater than or equal to 2% of the bond amount requested and must provide at least 5% of the total Development Units at or below 30% AMFI or an additional 5% of the total Development Units if the Applicant has chosen category Priority 1B on the residential rental attachment) (2 points).

(11) Proximity to Community Services / Amenities (Community services / amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services / amenities are located) (maximum 12 points)

(A) Grocery Store (1 point);

(B) Pharmacy (1 point);

(C) Convenience store (1 point);

(D) Retail Facilities (Target, Wal-Mart, Home Depot, etc…) (1 point);

(E) Bank / Financial Institution (1 point);

(F) Restaurant (1 point);

(G) Public Recreation Facilities (park, civic center, YMCA) (1 point);

(H) Fire / Police Station (1 point);

(I) Medical Facilities (hospitals, minor emergency, etc…) (1 point);

(J) Public Library (1 point);

(K) Public Transportation (1/2 mile from site) (1 point);

(L) Public School (only one school required for point) (1 point).

(12) Proximity to Negative Features (within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed below within the stated area if that is correct. (maximum -20 points)

(A) Junkyards (5 points);

(B) Active Railways (excluding light rail) (5 points);

(C) Interstate Highways / Service Roads (5 points);

(D) Solid Waste / Sanitary Landfills (5 points);

(E) High Voltage Transmission Towers (5 points).

(13) Acquisition / Rehabilitation Developments will receive ten (10) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 250 total units).

(e) Financing Commitments. After approval by the Board of the inducement resolution, and before submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(f) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must provide a final Application and such supporting material as is required by the Department at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. The final application must adhere to the Department's QAP

and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in paragraphs (1) through (42) of this subsection shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board. The final application and supporting material shall consist of the following information:

(1) A Public Notification Sign shall be installed on the Development site no later than fourteen (14) days after the submission of Volume I and II of the Tax Credit Application to the Department (pictures and invoice receipts must be submitted as evidence of installation within fourteen (14) days of the submission). The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA 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 all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. 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 1,000 foot or local ordinance area 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. In addition (within the 14 days), the Applicant must notify any public official that has changed since the submission of the pre-application and any neighborhood organizations that are known and were not notified at the time of the pre-application submission.

(2) Completed Uniform Application forms in the format required by the Department;

(3) Certification of no changes from the pre-application to the final application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the application being placed below another application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points);

(4) Certification and agreement to comply with the Department's rules;

(5) A narrative description of the Development;

(6) A narrative description of the proposed financing;

(7) Firm letters of commitment from any lenders, credit providers, and equity providers involved in the transaction;

(8) Documentation of local Section 8 utility allowances;

(9) Site plan;

(10) Unit and building floor plans and elevations;

(11) Complete construction plans and specifications;

(12) General contractor's contract;

(13) Completion schedule;

(14) Copy of a recorded warranty deed if the Applicant already owns the Property, or a copy of an executed earnest money contract between the Applicant and the seller of the Property if the Property is to be purchased;

(15) A local map showing the location of the Property;

(16) Photographs of the Site;

(17) Survey with legal description;

(18) Flood plain map;

(19) Evidence of zoning appropriate for the proposed use from the appropriate local municipality that satisfies one of these subparagraphs (A) through (C) of this paragraph:

(A) no later than fourteen (14) days before the Board meets to consider the transaction, 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 they will recommend approval of the appropriate zoning to the entity responsible for final approval of zoning decisions;

(B) provide 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;

(C) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating the Development is permitted under the provision of the zoning ordinance that apply to the location of the Development or that there is not a zoning requirement.

(20) Evidence of the availability of utilities;

(21) Copies of any deed restrictions which may encumber the Property;

(22) A Phase I Environmental Site Assessment performed in accordance with the Department's Environmental Site Assessment Rules and Guidelines (§1.35 of this title);

(23) Title search or title commitment;

(24) Current tax assessor's valuation or tax bill;

(25) For existing Developments, current insurance bills;

(26) For existing Developments, past two (2) fiscal year end development operating statements;

(27) For existing Developments, current rent rolls;

(28) For existing Developments, substantiation that income-based tenancy requirements will be met prior to closing;

(29) A market study performed in accordance with the Department's Market Analysis Rules and Guidelines (§1.33 of this title);

(30) Appraisal of the existing or proposed Development performed in accordance with the Department's Underwriting Rules and Guidelines (§1.32 of this title;

(31) Statement that the Development Owner will accept tenants with Section 8 or other government housing assistance;

(32) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;

(33) Evidence that the Applicant and principals are registered with the Texas Secretary of State, as applicable;

(34) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;

(35) Documentation of non-profit status if applicable;

(36) Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals;

(37) Corporate resumes and individual resumes of the Applicant and any principals;

(38) Latest two (2) annual financial statements and current interim financial statement for the Applicant and its principals;

(39) Latest income tax filings for the Applicant and its principals;

(40) Resolutions or other documentation indicating that the transaction has been approved by the general partner;

(41) Resumes of the general contractor's and the property manager's experience; and

(42) Such other items deemed necessary by the Department per individual application.

(g) Evaluation Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition point). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) through (6) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further the public purposes of the Department as identified in the Act.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

(A) 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

(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score of 30 or more; or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(h) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(i) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

(1) The Development Owner market study;

(2) The location, including supporting broad geographic dispersion;

(3) The compliance history of the Development Owner;

(4) The financial feasibility;

(5) The Development's proposed size and configuration in relation to the housing needs of the community in which the Development is located and the needs of the area, region and state;

(6) The Development's proximity to other low income Developments including avoiding over concentration;

(7) The availability of adequate public facilities and services;

(8) The anticipated impact on local school districts, giving due consideration to the authorized land use;

(9) Zoning and other land use considerations;

(10) Fair Housing law, including affirmatively furthering fair housing;

(11) 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.

(j) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The

process for appeals and grounds for appeals may be found under §§1.7 and 1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules Title 34, Part 9, Chapter 181, Subchapter A. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. In accordance with Section 2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator (fax: (512) 475-3978). For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

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

(l) Closing. Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§ 35.7. Regulatory and Land Use Restrictions.

(a) Filing and Term of LURA. A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. For Developments involving new construction, the term of the LURA will be the longer of 30 years, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible in accordance with the Act, or the period for which Bonds are outstanding.

(b) Development Occupancy. The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner of the Development. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) Set Asides.

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two set-asides:

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

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

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

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

(d) Global Income Requirement. All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed one hundred and forty percent (140%) of the area median income for a four-person household.

(e) Qualified 501(c)(3) Bonds. Developments which are financed from the proceeds of Qualified 501(c)(3) Bonds are further subject to the restriction that at least seventy-five percent (75%) of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) Taxable Bonds. The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) Special Needs. At least five percent (5%) of the Units within each Development must be designed to be accessible to Persons with Special Needs and hardware and cabinetry must be stored on site or provided to be installed on an as needed basis in such Units. The Development will comply with accessibility requirements in the Fair Housing Act Design manual. The Development Owner will use its best efforts (including giving preference to Persons with Special Needs) to:

(1) make at least five percent (5%) of the Units within the Development available for occupancy by Persons with Special Needs;

(2) make reasonable accommodations for such persons; and

(3) allow reasonable modifications at the tenant's sole expense pursuant to the Housing Act. During the term of the LURA, the Development Owner shall maintain written policies regarding the Development Owner's outreach and marketing program to Persons with Special Needs.

(h) Fair Housing. All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(i) Tenant Services. The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department.

(j) The LURA will require the Development Owner:

(1) To obtain, complete and maintain on file Tenant Income Certifications from each Eligible Tenant, including:

(A) a Tenant Income Certification dated immediately prior to the initial occupancy of each new Eligible Tenant in the Development; and

(B) thereafter, annual Tenant Income Certifications which must be obtained on or before the anniversary of such Eligible Tenant's occupancy of the Unit, and in no event less than once in every 12-month period following each Eligible Tenant's occupancy of a Unit in the Development. For administrative convenience, the Development Owner may establish the first date that a Tenant Income Certification for the Development is received as the annual recertification date for all tenants. The Development Owner will obtain such additional information as may be required in the future by §142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations which are tax-exempt private activity bonds described in §142(d) of the Code. The Development Owner shall make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income Certification is accurate by taking steps required under §142(d) of the Code pursuant to provisions of the Housing Act.

(C) The Development shall comply with Title 10, Part 1, Chapter 60, Subchapter A.

(2) As part of the verification, such steps may include the following, provided such action meets the requirements of §142(d) of the Code and the gross income of individuals shall be determined in a manner consistent with the determinations of low income families under section 8 of the United States Housing Act of 1937:

(A) obtain pay stubs sufficient to annualize income;

(B) obtain third party written verification of income;

(C) obtain an income verification from the applicant's current employer;

(D) obtain an income verification from the Social Security Administration; or

(E) if the applicant is self-employed, unemployed, does not have income tax returns or is otherwise not reasonably able to provide other forms of verification as required above, obtain another form of independent verification as would, in the Development Owner's reasonable commercial judgment, enable the Development Owner to determine the accuracy of the applicant's income information. The Development Owner shall retain all Tenant Income Certifications obtained in compliance with this subsection (b) of this section until the date that is six years after the last Bond is retired.

(3) To obtain from each tenant in the Development, at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form as provided by the Department to the Development Owner from time to time that

(A) such lease is subordinate to the Mortgage and the LURA;

(B) all statements made in the Tenant Income Certification submitted by such tenant are accurate;

(C) the family income and eligibility requirements of the LURA and the Loan Agreement are substantial and material obligations of tenancy in the Development;

(D) such tenant will comply promptly with all requests for information with respect to such requirements from the Development Owner, the Trustee and the Department; and

(E) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(4) To maintain complete and accurate records pertaining to the Low-Income Units and to permit, at all reasonable times during normal business hours and upon reasonable notice, any duly authorized representative of the Department, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect the books and records of the Development Owner pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units;

(5) On or before each February 15 during the qualified development period, to submit to the Department (to the attention of the Portfolio Management and Compliance Division) a draft of the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of §142(d) of the Code and on or before each March 31 during the qualified development period, to submit such completed form to the Secretary of the Treasury and the Department;

(6) To prepare and submit the compliance monitoring report. To cause to be prepared and submitted to the Department and the Trustee on the first day of the state restrictive period, and thereafter by

the tenth calendar day of each March, June, September, and December, or other quarterly schedule as determined by the Department with written notice to the Development Owner, a certified compliance monitoring report and Development Owner's certification in such form as provided by the Departments to the Development Owner from time to time; and

(7) To provide regular maintenance to keep the Development sanitary, decent and safe.

(8) To establish a reserve account consistent with the requirements of §2306.186, Texas Government Code.

(9) To prepare and submit the Housing Sponsor Report to the Department no later than March 1st of each year.

§35.8. Fees.

(a) Application and Issuance Fees. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code)

(b) Administration and Portfolio Management and Compliance Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds and portfolio management and compliance with the program requirements applicable to each Development.

§35.9. Waiver of Rules.

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in §§35.3 through 35.8 of this title relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

§35.10. No Discrimination.

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this Chapter.

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 July 12, 2004.

TRD-200404490
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 1, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-4595

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 37. LEGAL

SUBCHAPTER A. RULES OF PRACTICE

16 TAC §37.3

The Texas Alcoholic Beverage Commission adopts a new §37.3 governing the service of pleadings in contested administrative cases without changes to the text as published in the May 28, 2004, edition of the *Texas Register* (29 TexReg 5244.)

State Office of Administrative Hearing rule 1 Texas Administrative Code §155.55(d) requires the agency to have a specific statute or rule authorizing service of hearing notices and other matters on a respondent's last known address. This rule allows service on license, permit and certificate holders by delivery of certified mail to the licensee/permittee's last known address as reflected in the commission's licensing records. The rule allows service of adequate notice of commission proceedings in a timely, efficient, and reliable manner, allowing those proceedings to be resolved expeditiously.

No comments were received regarding this rule.

This rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Section 11.63 of the Alcoholic Beverage Code is affected by this rule.

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 July 12, 2004.

TRD-200404477
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 1, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 206-3204

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER D. NEWBORN SCREENING PROGRAM

25 TAC §37.52, §37.53

The Texas Department of Health (department) adopts amendments to §37.52 and §37.53, concerning the Newborn Screening Program. Section 37.52 is adopted with changes to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3096). Section 37.53 is adopted without changes, and therefore the section will not be republished.

Specifically, §37.52 concerns definitions, and §37.53 concerns conditions for which newborn screening tests are required. Section 37.53(2) requires that all newborns delivered in Texas shall be subjected to two screening tests for galactosemia. The term "galactosemia" includes three different but related conditions. Galactosemia caused by abnormal levels of the enzymes epimerase and kinase may be associated with cataracts, but only classical galactosemia, or galactose-1-phosphate uridyltransferase deficiency, is life-threatening. The amendments to §37.52 and §37.53 will enable the department to discontinue testing for the other two forms of galactosemia and to screen for only galactose-1-phosphate uridyltransferase deficiency. This focus on only the life-threatening form of galactosemia will enable the department to administer the Newborn Screening Program more efficiently and effectively.

The following comment was received concerning the proposed amendments. Following the comment is the department's response.

Comment: Concerning the sections as a whole, one commenter stated its support for the proposed amendments.

Response: The department acknowledges the commenter's support.

The department made the following change to improve the accuracy of the section:

Change: Concerning §37.52(1), (3) and (5), the department opened the paragraphs to make an editorial change reflecting the addition of "or its successor"/"or his successor" to the paragraphs.

The Texas Medical Association's Council on Scientific Affairs provided the comment in favor of the proposed amendments.

The amendments are adopted under the Health and Safety Code, §33.002, which directs the Texas Board of Health (board) to adopt rules specifying other heritable diseases to be included in the newborn screening program in addition to phenylketonuria and hypothyroidism; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, or the commissioner of health.

§37.52. Definitions.

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

(1) Board--The Texas Board of Health or its successor.

(2) Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, or guardian of the child's person is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose legal guardian is a bona fide resident or who is his/her own guardian.

(3) Commissioner--The commissioner of health or his successor.

(4) Congenital adrenal hyperplasia--An inherited condition which may lead to serious illness and death if not treated.

(5) Department--The Texas Department of Health or its successor.

(6) Galactose-1-phosphate uridyltransferase deficiency--An inherited condition, which if not treated, may cause fatal infection or mental retardation.

(7) Homocystinuria--An inherited condition, which if not treated, may cause mental retardation, blood clots, vision problems, skeletal abnormalities, and possibly death.

(8) Hypothyroidism--A condition which, if not treated, leads to mental and physical retardation.

(9) Phenylketonuria or PKU--An inherited condition, which if not treated may cause severe mental retardation.

(10) Program--The Newborn Screening Program of the department.

(11) Program administrator--The individual employed by the department who administrates and or manages the follow-up portion of the program.

(12) Satisfactory specimen--A blood specimen obtained by uniform absorption onto a filter paper target such that complete filling of the target is realized through to both front and back of the paper.

(13) Screening test, screen, or test--A test or battery of tests for the rapid determination of the need for a medical evaluation.

(14) Services--Those benefits identified by the board in §37.60 of this title (relating to Scope of Newborn Screening Program Services).

(15) Sickling hemoglobinopathy (including sickle cell disease)--An inherited condition, which predisposes an individual to fatal infection and interrupted blood supply to vital organs.

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 July 7, 2004.

TRD-200404416
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 1, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 458-7236

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CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §38.10

The Texas Department of Health (department) adopts an amendment to §38.10, concerning the payment of claims for services in the Children with Special Health Care Needs (CSHCN) Services Program, without changes to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3097), and therefore the section will not be republished.

Because the claims payment contractor and many of the providers are the same for Medicaid and for the CSHCN program, and for simplification of procedures, claims processing deadlines for the CSHCN Program historically have been the same as those for the Medicaid program. The Medicaid program recently adopted changes to its deadlines, and this amendment makes the CSHCN rule consistent with recent Medicaid program changes.

Specifically, the amendment to §38.10(1)(B)(ii) changes the correction and resubmission deadline from "within 95 days of denial" to "within 120 days of the last denial of and/or adjustment to the original claim." The amendment to §38.10(3), regarding exceptions to deadlines, removes the 95-day descriptor and changes the language to include not only exceptions to claim receipt deadlines, but also exceptions to correction and resubmission deadlines. The amendment to §38.10(5), concerning other exceptions to deadlines, adds language to include claim corrections and resubmissions.

No comments were received concerning the proposal during the comment period.

The amendment is adopted under the Health and Safety Code, §35.009, which authorizes the Texas Board of Health (board) to adopt reasonable procedures and standards for the determination of fees in the CSHCN Program; and §12.001, which provides the board with the authority to adopt rules for its procedures and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

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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Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 1, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 458-7236

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CHAPTER 157. EMERGENCY MEDICAL CARE

The Texas Department of Health (department) adopts amendments to §157.25, concerning Out of Hospital Do Not Resuscitate Orders and §157.41, concerning Automated External Defibrillators; repeal of §157.130, concerning the emergency medical services and trauma care system account; and new §157.5, concerning rule exception request for Emergency Medical Services (EMS) personnel and applicants for EMS certification or licensure; new §157.130, concerning the emergency medical services and trauma care system account and emergency medical services, trauma facilities, and trauma care system fund; and new §157.131, concerning the designated trauma facility and emergency medical services account. New §§157.130 and §157.131 are adopted with changes to the proposed text as published in the April 30, 2004, issue of the *Texas Register* (29 TexReg 4056) as a result of staff comments. New §157.5, amendments to §§157.25, 157.41 and the repeal of §157.130 are adopted without changes and will not be republished.

Specifically, the sections cover out of hospital Do Not Resuscitate Orders, minimum standards for Automated External Defibrillator training, rule exceptions requests for EMS personnel and applicants for EMS certification or licensure and funding formulas/eligibility criteria for the emergency medical services and trauma care system account and emergency medical services, trauma facilities, and trauma care system fund and the designated trauma facility and emergency medical services account.

Rule amendments regarding Out of Hospital Do Not Resuscitate Orders are required to further protect public health by improving the understanding of and clarification of the Do Not Resuscitate form for out of hospital providers and healthcare practitioners utilizing the form. Rule amendments concerning Automated External Defibrillators are required to further protect public health by creating minimum standards for Automated External Defibrillator training.

The repeal and new rule relating to emergency medical services and trauma care system account and emergency medical services, trauma facilities, and trauma care system fund are necessary to update, clarify, and comply with revisions to the Texas Health and Safety Code, Chapter 773, §§773.006 and 773.122, pursuant to Senate Bill 1131 of the 78th Regular Session of the Texas Legislature, 2003. The new rule concerning rule exception requests for Emergency Medical Services (EMS) personnel and applicants for EMS certification or licensure was necessary to update and clarify procedures for the department to grant exceptions for EMS personnel and EMS certificates. The new rule concerning the designated trauma facility and emergency medical services account complies with the creation of Texas Health and Safety Code, Chapter 780, pursuant to Senate Bill 1131 of the 78th Regular Session of the Texas Legislature, 2003.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). The sections have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however, revisions to the sections were necessary and described in this preamble. Authority for the board to propose and adopt rules in this section is found in the Health Safety Code, Chapter 773.

The department published a Notice of Intention to review and consider for readoption, revision, or repeal Chapter 157, Subchapter B, Emergency Medical Services Provider Licenses, §157.25; Subchapter C. Emergency Medical Services Training and Course Approval, §157.41 and Subchapter G, Emergency Medical Services Trauma Systems, §157.130 in the September

12, 2003, issue of the *Texas Register* (28 TexReg 8013). There were no comments received due to the publication of the notice.

The department received eight public comments during the comment period.

Comment: Concerning §157.131(a)(11) and (13), one commentor requested that rule language be amended to more clearly define cost to charge ratio.

Response: The department agrees with the suggested comment. Language was deleted in §157.131(a)(11) and added to §157.131(a)(13) to clarify the department's intent. Identical language was also deleted in §157.130(a)(10) and added to §157.130(a)(12) to clarify the department's intent. No change was made as a result of the comment.

Comment: Concerning §157.131(a)(11), one commentor requested the insertion of rule language that would illustrate specific line numbers from the Medicaid cost report to be pulled.

Response: The department disagrees with the suggested comment because of the potential for these citations to change frequently. This information will be included in the application instructions. No change was made as a result of the comment.

Comment: Concerning §157.131(d)(5)(B), one commentor requested that the rule language be amended to reduce the number of notarized signatures required in the uncompensated trauma care application.

Response: The department disagrees with the suggested comment. The adopted rule language provides an added layer of accountability to ensure a hospital's uncompensated trauma care costs are accurately reported in its uncompensated trauma care application. No change was made as a result of the comment.

Comment: Concerning §157.131(e)(3), the Texas Medical Association and the Texas Orthopedic Association provided comment requesting that a new subsection be created to require hospitals to submit a report to the department, upon request, outlining the aggregate amount of money a hospital distributes to trauma physicians by specialty for uncompensated trauma care.

Response: The department disagrees with the suggested amendment to the rule language. Under §157.131(e)(3), a hospital is reimbursed for uncompensated trauma care previously provided by the hospital. The hospital's charges and costs are attested to through the department's application process. Before receiving monies, a hospital will have already provided sufficient documentation to the department that it has already provided uncompensated care. The department believes that an additional required detailed report to the state of how the hospital expended its reimbursements from §157.131(e)(3) would be an undue burden. No changes were made as a result of the comments.

Comment: Concerning §157.131(e)(3)(G), the Harris County Medical Society, Texas Association of Neurological Surgeons, Texas Orthopedic Association and Texas Medical Association provided comments requesting the following amending language: Hospitals shall have a physician incentive plan that supports the facility's participation in the trauma system.

Response: The department disagrees with the suggested amendment to language. After careful consideration of all public comment regarding §157.131, subsection (e)(3)(G), the department concluded that it would be more flexible and equitable for physician compensation contracts to be negotiated at local levels rather than being mandated by rule. The adopted rule language encourages hospitals to compensate its physicians in a manner that supports the facility's participation in the trauma system. Additionally, the current proposed language adheres to legislation author's, Representative Dianne Delisi, letter of legislative intent, dated December 2, 2003, addressed to Commissioner Sanchez stating that physician reimbursement is a local issue and that House Bill 3588 of the 78th Session of the Texas Legislature, 2003, was not intended to require physician reimbursement agreements. No changes were made as a result of the comments.

The department made the following changes due to staff comments along with minor editorial changes.

Change: Concerning §§157.130(a)(9) and 157.131(a)(9), in order to clarify the intent and improve the accuracy of the section, the verbiage "or discharged from the hospital" was removed from the definition of "Operative intervention". Deleting the verbiage clarifies and improves the accuracy of the definition.

Change: Concerning §157.130(e)(3), in order to clarify the intent and simplify the distributions of funds outlined in the subsection, a new subparagraph (D) was inserted into the rule, providing the department the option to distribute funds outlined in the subsection in conjunction with the distribution of funds outlined in §157.131(e)(2), concerning the hospital allocation of the designated trauma facility and emergency medical services account.

Four organizations provided comments that were in favor of the rules overall except for the language "Hospitals shall have a physician incentive plan that supports the facility's participation in the trauma system". Two organizations suggested that we create a new subsection that would require hospitals to report additional information to the department. Two individuals and one organization provided comments that were in favor of adopting the rules proposed at the April 15, 2004, Board of Health Meeting without change. One commenter was neither for nor against the rules in their entirety, but suggested changes for clarification. The remaining comments were from staff.

SUBCHAPTER A. EMERGENCY MEDICAL SERVICES - PART A

25 TAC §157.5

The new rule is adopted under the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department or the commissioner of health. The review of the rule implements Government Code, §2001.039.

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 July 9, 2004.

TRD-200404469
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 29, 2004
Proposal publication date: April 30, 2004
For further information, please call: (512) 458-7236

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SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.25

The amendment is adopted under the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department or the commissioner of health. The review of the rule implements Government Code, §2001.039.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.41

The amendment is adopted under the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department or the commissioner of health. The review of the rule implements Government Code, §2001.039.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §157.130

The repeal is adopted under the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department or the commissioner of health. The review of the rule implements Government Code, §2001.039.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: April 30, 2004
For further information, please call: (512) 458-7236

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25 TAC §157.130, §157.131

The new rules are adopted under the Texas Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department or the commissioner of health. The review of the rules implements Government Code, §2001.039.

§157.130. Emergency Medical Services and Trauma Care System Account and Emergency Medical Services, Trauma Facilities, and Trauma Care System Fund.

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

(1) Extraordinary emergency--An event or situation which may disrupt the services of an EMS/trauma system.

(2) Rural county--A county with a population of less than 50,000 based on the latest official federal census population figures.

(3) Urban county--A county with a population of 50,000 or more based on the latest official federal census population figures.

(4) Emergency transfer--Any immediate transfer of an emergent or unstable patient, ordered by a licensed physician, from a health care facility to a health care facility which has the capability of providing a higher level of care or of providing a specialized type of care not available at the transferring facility.

(5) Trauma care--Care provided to patients who underwent treatment specified in at least one of the following ICD-9 (International Classification of Diseases, 9th Revision, of the National Center of Health Statistics) codes: between 800.00 and 959.9, including 940.0-949.0 (burns), excluding 905.0-909.0 (late effects of injuries), 910.0-924.0 (blisters, contusions, abrasions, and insect bites), 930.0-939.0 (foreign bodies), and who underwent an operative intervention

as defined in paragraph (9) of this subsection or was admitted as an inpatient for greater than 23-hours or who died after receiving any emergency department evaluation or treatment or was dead on arrival to the facility or who transferred into or out of the hospital.

(6) Uncompensated trauma care--The sum of "charity care" and "bad debt" resulting from trauma care as defined in paragraph (5) of this subsection after due diligence to collect. Contractual adjustments in reimbursement for trauma services based upon an agreement with a payor (to include but not limited to Medicaid, Medicare, Children's Health Insurance Program (CHIP), etc.) is not uncompensated trauma care.

(7) Charity care--The unreimbursed cost to a hospital of providing health care services on an inpatient or emergency department basis to a person classified by the hospital as "financially indigent" or "medically indigent".

(A) Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(B) Medically indigent--A person whose medical or hospital bills after payment by third-party payors (to include but not limited to Medicaid, Medicare, CHIP, etc.) exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(8) Bad debt--The unreimbursed cost to a hospital of providing health care services on an inpatient or emergency department basis to a person who is financially unable to pay, in whole or in part, for the services rendered and whose account has been classified as bad debt based upon the hospital's bad debt policy. A hospital's bad debt policy should be in accordance with generally accepted accounting principles.

(9) Operative intervention--Any surgical procedure resulting from a patient being taken directly from the emergency department to an operating suite regardless of whether the patient was admitted to the hospital.

(10) Calculation of the costs of uncompensated trauma care--For the purposes of this section, a hospital will calculate its total costs of uncompensated trauma care by summing its charges related to uncompensated trauma care as defined in paragraph (6) of this subsection, then applying the cost to charge ratio defined in paragraph (12) of this subsection and derived in accordance with generally accepted accounting principles.

(11) County of licensure--The County within which lies the location of the business mailing address of a licensed ambulance provider, as indicated by the provider on the application for licensure form that it filed with the department.

(12) Cost-to-charge ratio--A hospital's overall cost-to-charge ratio determined by the Health and Human Services Commission from the hospital's Medicaid cost report. The hospital's latest available cost-to-charge ratio shall be used to calculate its uncompensated trauma care costs.

(b) Reserve. On September 1 of each year, there shall be a reserve of $500,000 in the emergency medical services (EMS) and trauma care system account and the emergency medical services, trauma facilities, and trauma care system fund (accounts) for extraordinary emergencies. During the fiscal year, distributions may be made from the reserve by the commissioner of health based on requests which demonstrate need and impact on the EMS and trauma care system (system). Proposals not immediately recommended for funding will be reconsidered at the end of each fiscal year, if funding is available, and need are still present.

(c) Allotments. The EMS allotment shall be 50%, the trauma service area (TSA) allotment shall be not more than 20%, and the uncompensated care allotment shall be at least 27% of the funds remaining from the accounts after any amount necessary to maintain the extraordinary emergency reserve of $500,000 has been deducted.

(1) Allotment Determination. Each year, the department shall determine:

(A) eligibility of all EMS providers, regional advisory councils (RACs), and trauma facilities;

(B) the amount of the TSA allotment, the EMS allotment, and the uncompensated care allotment;

(C) each county's share of the EMS allotment for eligible recipients in the county;

(D) each RAC's share of the TSA allotment; and

(E) each designated trauma facility's share of the uncompensated care allotment.

(2) EMS Allotment. The department shall contract with each eligible RAC to distribute the county shares of the EMS allotment to eligible EMS providers based within counties which are aligned within the relevant RAC. Prior to distribution of the county shares to eligible providers, the RAC shall submit a distribution proposal, approved by the RAC's voting membership, to the department for approval.

(A) The county portion of the EMS allotment shall be distributed directly to eligible recipients without any reduction in the total amount allocated by the department and shall be used as an addition to current county EMS funding of eligible recipients, not as a replacement.

(B) The department shall evaluate each RAC's distribution plan based on the following:

(i) fair distribution process to all eligible providers, taking into account all eligible providers participating in contiguous TSAs;

(ii) needs of the EMS providers; and

(iii) evidence of consensus opinion for eligible entities.

(C) A RAC opting to use a distribution plan from the previous fiscal year shall submit, to the department, a letter or email of intent to do so.

(D) Eligible EMS providers may opt to pool funds or contribute funds for a specified RAC purpose.

(3) TSA Allotment. The department shall contract with each eligible RAC to distribute the TSA allotment. Prior to distribution of the TSA allotment, the RAC shall submit a budget proposal to the department for approval. The department shall evaluate each RAC's budget according to the following:

(A) budget reflects all funds received by the RAC, including funds not expended in the previous fiscal year;

(B) budget contains no ineligible expenses;

(C) appropriate mechanism is used by RAC for budgetary planning; and

(D) program areas receiving funding are identified by budget categories.

(4) Uncompensated Care Allotment. The department shall contract with each eligible RAC to distribute shares of the uncompensated care allotment to eligible designated trauma facilities within the RAC's TSA. Prior to distribution of the uncompensated care allotment, the RAC shall submit a distribution proposal, approved by the RAC's voting membership, to the department for approval.

(A) The department shall evaluate each RAC's distribution plan based on the following:

(i) fair distribution process to all eligible providers;

(ii) needs of designated trauma facilities; and

(iii) evidence of consensus opinion from eligible entities.

(B) A RAC opting to use a distribution plan from the previous fiscal year shall submit, to the department, a letter or email of intent to do so.

(C) Eligible designated hospitals may opt to pool funds or contribute funds for a specified RAC purpose for novel or innovative projects.

(d) Eligibility requirements. To be eligible for funding from the accounts, all potential recipients (EMS Providers, RACs, Registered First Responder Organizations and hospitals) must maintain active involvement in regional system development. Potential recipients must also meet requirements for reports of expenditures from the previous year and planning for use of the funding in the upcoming year.

(1) Extraordinary Emergency Funding. To be eligible to receive extraordinary emergency funding, an entity must:

(A) be a licensed EMS provider, a licensed general hospital, or a registered first responder organization;

(B) submit to the department a signed written request, containing the entity name, contact information, amount of funding requested, and a description of the extraordinary emergency; and

(C) timely submit a signed and fully completed extraordinary emergency information checklist (on the department's form) to the department.

(2) EMS Allotment. To be eligible for funding from the EMS allotment, an EMS provider must meet the following requirements:

(A) maintain provider licensure as described in §157.11 of this title (relating to Requirements for An EMS Provider License) and provide emergency medical services and/or emergency transfers;

(B) demonstrate utilization of the RAC regional protocols regarding patient destination and transport in all TSAs in which they operate (verified by each RAC);

(C) demonstrate active participation in the regional system performance improvement (PI) program in all TSAs in which they operate (verified by each RAC);

(D) if an EMS provider is licensed in a county or contracted to provide emergency medical services in a county that is contiguous with a neighboring TSA, it must participate on at least one RAC of the TSAs:

(i) participation on both RACs is encouraged;

(ii) RAC participation shall follow actual patient referral patterns;

(iii) an EMS provider, contracted to provide emergency medical services within a county of any one TSA and whose county of licensure is another county not in or contiguous with that TSA, must be an active member of the RAC for the TSA of their contracted service area and meet that RAC's definition of participation and requirements listed in subparagraph (E)(i)-(vi) of this paragraph; and

(iv) it is the responsibility of an EMS provider to contact each RAC in which it operates to ensure knowledge of the provider's presence and potential eligibility for funding from the EMS allotment related to that RAC's TSA;

(E) if an EMS provider is serving any county beyond its county of licensure it must provide to the department evidence of a contract or letter of agreement with each additional county government or taxing authority in which service is provided:

(i) inter-facility transfer letters of agreement and/or contracts, as well as mutual aid letters of agreement and/or contracts, do not meet this requirement;

(ii) contracts or letters of agreement must be dated and submitted to the department on or before August 31 of the respective year, and be effective more than six months of the upcoming fiscal year;

(iii) effective dates of the contracts or letters of agreement should be provided;

(iv) EMS providers with contracts or letters of agreement on file with the department which include contract service dates that meet the required time period need not resubmit.

(v) EMS providers are responsible for assuring that all necessary portions of their contracts and letters of agreement have been received by the department; and

(vi) air ambulance providers must meet the same requirements as ground transport EMS providers to be eligible to receive funds from a specific county other than the county of licensure; and

(F) if an EMS provider is licensed in a particular county and has a contract (with a county government or taxing authority) for a service area which is a geopolitical subdivision (examples listed below) whose boundary lines cross multiple county lines, it will be considered eligible for the 911 EMS Allotment for all counties overlapped by that geopolitical subdivision's boundary lines. A contract with every county that composes the geopolitical subdivision is not necessary. And, the eligibility of EMS providers, whose county of licensure is in a geopolitical subdivision other than those listed in clauses (i)-(vi) of this subparagraph, will be evaluated on a case-by-case basis.

(i) Municipalities.

(ii) School districts.

(iii) Emergency service districts (ESDs).

(iv) Hospital districts.

(v) Utility districts.

(vi) Prison districts.

(3) RAC Allotment. To be eligible for funding from the RAC allotment, a RAC must:

(A) be officially recognized by the department as described in §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems);

(B) be incorporated as an entity that is exempt from federal income tax under §501(a) of the United States Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code;

(C) submit documentation of ongoing system development activity and future planning;

(D) have demonstrated that a regional system performance improvement (PI) process is ongoing by submitting to the department the following:

(i) lists of committee meeting dates and attendance rosters for the RAC'S most recent fiscal year;

(ii) committee membership rosters which included each member's organization or constituency; and

(iii) lists of issues being reviewed in the system performance improvement meetings; and

(E) submit all required EMS allocation eligibility items addressed in paragraph (2)(B)-(C) of this subsection.

(4) To be eligible to distribute the EMS, Uncompensated Care and TSA allotments, a RAC must be incorporated as an entity that is exempt from federal income tax under §501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code.

(5) Uncompensated Care Allotment. To be eligible for funding from the Uncompensated Care allotment, a hospital must be a department designated trauma facility or a Department of Defense hospital that is a department designated trauma facility.

(A) To receive funding from the Uncompensated Care allotment, an application must be submitted within the time frame specified by the department and include the following:

(i) name of facility;

(ii) location of facility including mailing address, city and county; and

(iii) Texas Provider Identifier (TPI number) or accepted federal identification number.

(B) The application must be signed and sworn to before a Texas Notary Public by the chief financial officer, chief executive officer and the chairman of the facility's board of directors.

(C) A copy of the application shall be distributed by Level I, II, or III facilities to the trauma medical director and Level IV facilities to the physician director.

(D) The department may opt to use data from applications submitted by qualified hospitals in accordance with §157.131(d)(5) of this title (relating to Designated Trauma Facility and Emergency Medical Services Account) for the distribution of funds outlined in subsection (e)(3) of this section.

(E) Additional information may be requested at the department's discretion.

(e) Calculation Methods. Calculation of county shares of the EMS allotment, the RAC shares of the TSA allotment, and the TSA's share of the uncompensated care allotment.

(1) EMS allotment.

(A) Counties will be classified as urban or rural based on the latest official federal census population figures.

(B) The EMS allotment will be derived by adjusting the weight of the statutory criteria in such a fashion that, in so far as possible, 40% of the funds are allocated to urban counties and 60% are allocated to rural counties.

(C) An individual county's share of the EMS allotment shall be based on its geographic size, population, and number of emergency health care runs multiplied by adjustment factors, determined by the department, so the distribution approximates the required percentages to urban and rural counties.

(D) The formula shall be: ((the county's population multiplied by an adjustment factor) plus (the county's geographic size multiplied by an adjustment factor) plus (the county's total emergency health care runs multiplied by an adjustment factor) divided by 3) multiplied by the total EMS allocation). The adjustment factors will be manipulated so that the distribution approximates the required percentages to urban and rural counties. Total emergency health care runs shall be the number of emergency runs electronically transmitted to the department in a given calendar year by EMS providers.

(2) TSA allotment.

(A) A RAC's share of the TSA allotment shall be based on its relative geographic size, population, and trauma care provided as compared to all other TSAs.

(B) The formula shall be: ((the TSA's percentage of the state's total population) plus (the TSA's percentage of the state's total geographic size) plus (the TSA's percentage of the state's total trauma care) divided by 3) multiplied by the total TSA allotment). Total trauma care shall be the number of trauma patient records electronically transmitted to the department in a given calendar year by EMS providers and hospitals.

(3) Uncompensated care allotment.

(A) The uncompensated care allotment shall be based on a TSA's relative geographic size, population, and a TSA's percentage of the state's total reported uncompensated trauma care.

(B) The formula shall be: ((the TSA's percentage of the state's total population) plus (the TSA's percentage of the state's total geographic size) plus (the TSA's percentage of the total reported cost of uncompensated trauma care by qualified hospitals that year) divided by 3) multiplied by the total uncompensated care allotment).

(C) For purposes of subparagraphs (A)-(B) of this paragraph, the reporting period of a facility's uncompensated trauma care shall apply to costs incurred during the preceding calendar year.

(D) The department may choose to distribute funds outlined in paragraph (3) of this subsection, to eligible recipients, in conjunction with the distribution of funds outlined in §157.131(e)(2) of this title concerning the hospital allocation of the designated trauma facility and emergency medical services account.

(f) Loss of funding eligibility. If the department finds that an EMS provider, RAC, or trauma facility has violated the Health and Safety Code, §773.122, or fails to comply with this section, the department may withhold account monies for a period of one to three years depending upon the seriousness of the infraction.

§157.131. Designated Trauma Facility and Emergency Medical Services Account.

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

(1) Extraordinary emergency--An event or situation which may disrupt the services of an EMS/trauma system.

(2) Rural county--A county with a population of less than 50,000 based on the latest official federal census population figures.

(3) Urban county--A county with a population of 50,000 or more based on the latest official federal census population figures.

(4) Emergency transfer--Any immediate transfer of an emergent or unstable patient, ordered by a licensed physician, from a health care facility to a health care facility which has the capability of providing a higher level of care or of providing a specialized type of care not available at the transferring facility.

(5) Trauma care--Care provided to patients who underwent treatment specified in at least one of the following ICD-9 (International Classification of Diseases, 9th Revision, of the National Center of Health Statistics) codes: between 800.00 and 959.9, including 940.0-949.0 (burns), excluding 905.0-909.0 (late effects of injuries), 910.0-924.0 (blisters, contusions, abrasions, and insect bites), 930.0-939.0 (foreign bodies), and who underwent an operative intervention as defined in paragraph (9) of this subsection or was admitted as an inpatient for greater than 23-hours or who died after receiving any emergency department evaluation or treatment or was dead on arrival to the facility or who transferred into or out of the hospital.

(6) Uncompensated trauma care--The sum of "charity care" and "bad debt" resulting from trauma care as defined in (a)(5) of this section after due diligence to collect. Contractual adjustments in reimbursement for trauma services based upon an agreement with a payor (to include but not limited to Medicaid, Medicare, Children's Health Insurance Program (CHIP), etc.) is not uncompensated trauma care.

(7) Charity care--The unreimbursed cost to a hospital of providing health care services on an inpatient or emergency department basis to a person classified by the hospital as "financially indigent" or "medically indigent".

(A) Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(B) Medically indigent--A person whose medical or hospital bills after payment by third-party payors (to include but not limited to Medicaid, Medicare, CHIP, etc.) exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(8) Bad debt--The unreimbursed cost to a hospital of providing health care services on an inpatient or emergency department basis to a person who is financially unable to pay, in whole or in part, for the services rendered and whose account has been classified as bad debt based upon the hospital's bad debt policy. A hospital's bad debt policy should be in accordance with generally accepted accounting principles.

(9) Operative intervention--Any surgical procedure resulting from a patient being taken directly from the emergency department to an operating suite regardless of whether the patient was admitted to the hospital.

(10) Active pursuit of department designation as a trauma facility--means that by December 31, 2003, a licensed hospital, applying for a designation from the department as a trauma facility, must have submitted:

(A) a complete application to the department's trauma facility designation program or appropriate agency for trauma verification;

(B) evidence of participation in Trauma Services Area (TSA) Regional Advisory Council (RAC) initiatives;

(C) evidence of a hospital trauma performance improvement committee; and

(D) data to the department's EMS/Trauma Registry.

(11) Calculation of the costs of uncompensated trauma care--For the purposes of this section, a hospital will calculate its total costs of uncompensated trauma care by summing its charges related to uncompensated trauma care as defined in paragraph (6) of this subsection, then applying the cost to charge ratio defined in paragraph (13) of this subsection and derived in accordance with generally accepted accounting principles.

(12) County of licensure--The county within which lies the location of the business mailing address of a licensed ambulance provider, as indicated by the provider on the application for licensure form that it filed with the department.

(13) Cost-to-charge ratio--A hospital's overall cost-to-charge ratio determined by the Health and Human Services Commission from the hospital's Medicaid cost report. The hospital's latest available cost-to-charge ratio shall be used to calculate its uncompensated trauma care costs.

(b) Reserve. On September 1 of each year, there shall be a reserve of $500,000 in the designated trauma facility and emergency medical services account (account) for extraordinary emergencies. During the fiscal year, distributions may be made from the reserve by the commissioner of health based on requests which demonstrate need and impact on the EMS and trauma care system (system). Proposals not immediately recommended for funding will be reconsidered at the end of each fiscal year, if funding is available, and a need is still present.

(c) Allocations. The EMS allocation shall be not more than 2%, the TSA allocation shall be not more than 1%, and the hospital allocation shall be at least 96% of the funds appropriated from the account after any amount necessary to maintain the extraordinary emergency reserve of $500,000 has been deducted.

(1) Allocation Determination. Each year, the bureau of emergency management (department) shall determine:

(A) eligible recipients for the EMS allocation, TSA allocation, and hospital allocation;

(B) the amount of the TSA allocation, the EMS allocation, and the hospital allocation;

(C) each county's share of the EMS allocation for eligible recipients in the county;

(D) each RAC's share of the TSA allocation; and

(E) each facility's share of the hospital allocation.

(2) EMS Allocation. The department shall contract with each eligible RAC to distribute the county shares of the EMS allocation to eligible EMS providers based within counties which are aligned within the relevant RAC. Prior to distribution of the county shares to eligible providers, the RAC shall submit a distribution proposal, approved by the RAC's voting membership, to the department for approval.

(A) The county portion of the EMS allocation shall be distributed directly to eligible recipients without any reduction in the total amount allocated by the department and shall be used as an addition to current county EMS funding of eligible recipients, not as a replacement.

(B) The department shall evaluate each RAC's distribution plan based on the following:

(i) fair distribution process to all eligible providers, taking into account all eligible providers participating in contiguous TSAs;

(ii) needs of the EMS providers; and

(iii) evidence of consensus opinion for eligible entities.

(C) A RAC opting to use a distribution plan from the previous fiscal year shall submit, to the department, a letter or email of intent to do so.

(D) Eligible EMS providers may opt to pool funds or contribute funds for a specified RAC purpose.

(3) TSA Allocation. The department shall contract with eligible RACs to distribute the TSA allocation. Prior to distribution of the TSA allocation, the RAC shall submit a budget proposal to the department for approval. The department shall evaluate each RAC's budget according to the following:

(A) budget reflects all funds received by the RAC, including funds not expended in the previous fiscal year;

(B) budget contains no ineligible expenses;

(C) appropriate mechanism is used by RAC for budgetary planning; and

(D) program areas receiving funding are identified by budget categories.

(4) Hospital Allocation. The department shall distribute funds directly to facilities eligible to receive funds from the hospital allocation to subsidize a portion of uncompensated trauma care provided or to fund innovative projects to enhance the delivery of patient care in the overall EMS/Trauma System. Funds distributed from the hospital allocations shall be made based on, but not limited to:

(A) the percentage of the hospital's uncompensated trauma care cost in relation to total uncompensated trauma care cost reported by qualified hospitals that year; and

(B) availability of funds.

(d) Eligibility requirements. To be eligible for funding from the account, all potential recipients (EMS Providers, RACs, Registered First Responder Organizations and hospitals) must maintain active involvement in regional system development. Potential recipients also must meet requirements for reports of expenditures from the previous year and planning for use of the funding in the upcoming year.

(1) Extraordinary Emergency Funding. To be eligible to receive extraordinary emergency funding, an entity must:

(A) be a licensed EMS provider, a licensed hospital, or a registered first responder organization;

(B) submit to the department a signed written request, containing the entity name, contact information, amount of funding requested, and a description of the extraordinary emergency; and

(C) timely submit a signed and fully completed extraordinary emergency information checklist (on the department's form) to the department.

(2) EMS Allocation. To be eligible for funding from the EMS allocation an EMS provider must meet the following requirements:

(A) maintain provider licensure as described in §157.11 of this title and provide emergency medical services and/or emergency transfers;

(B) demonstrate utilization of the RAC regional protocols regarding patient destination and transport in all TSAs in which they operate (verified by each RAC);

(C) demonstrate active participation in the regional system performance improvement (PI) program in all TSAs in which they operate (verified by each RAC);

(D) if an EMS provider is licensed in a county or contracted to provide emergency medical services in a county that is contiguous with a neighboring TSA, it must participate on at least one RAC of the TSAs:

(i) participation on both RACs is encouraged;

(ii) RAC participation shall follow actual patient referral patterns;

(iii) an EMS provider contracted to provide emergency medical services within a county of any one TSA and whose county of licensure is another county not in or contiguous with that TSA must be an active member of the RAC for the TSA of their contracted service area and meet that RAC's definition of participation and requirements listed in subparagraph (E)(i)-(vi) of this paragraph; and

(iv) it is the responsibility of an EMS provider to contact each RAC in which it operates to ensure knowledge of the provider's presence and potential eligibility for funding from the EMS allotment related to that RAC's TSA;

(E) if an EMS provider is serving any county beyond its county of licensure it must provide to the department evidence of a contract or letter of agreement with each additional county government or taxing authority in which service is provided:

(i) inter-facility transfer letters of agreement and/or contracts, as well as mutual aid letters of agreement and/or contracts, do not meet this requirement;

(ii) contracts or letters of agreement must be dated and submitted to the department on or before August 31 of the respective year, and be effective more than six months of the upcoming fiscal year;

(iii) effective dates of the contracts or letters of agreement should be provided;

(iv) EMS providers with contracts or letters of agreement on file with the department which include contract service dates that meet the required time period (noted in this subsection) need not resubmit;

(v) EMS providers are responsible for assuring that all necessary portions of their contracts and letters of agreement have been received by the department; and

(vi) air ambulance providers must meet the same requirements as ground transport EMS providers to be eligible to receive funds from a specific county other than the county of licensure; and

(F) if a EMS provider is licensed in a particular county and has a contract (with a county government or taxing authority) for a service area which is a geopolitical subdivision (examples listed below) whose boundary lines cross multiple county lines, it will be considered eligible for the 911 EMS Allocation for all counties overlapped by that geopolitical subdivision's boundary lines. A contract with every county that composes the geopolitical subdivision is not necessary. And, the eligibility of EMS providers, whose county of licensure is in a geopolitical subdivision other than those listed in clauses (i)-(vi) of this subparagraph, will be evaluated on a case-by-case basis.

(i) Municipalities.

(ii) School districts.

(iii) Emergency service districts (ESDs).

(iv) Hospital districts.

(v) Utility districts.

(vi) Prison districts.

(3) RAC Allocation. To be eligible for funding from the TSA allocation, a RAC must:

(A) be officially recognized by the department as described in §157.123 of this title (relating to Regional Emergency Medical Services/Trauma Systems);

(B) be incorporated as an entity that is exempt from federal income tax under §501(a) of the United States Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code;

(C) submit documentation of ongoing system development activity and future planning;

(D) have demonstrated that a regional system performance improvement process is ongoing by submitting to the department the following:

(i) lists of committee meeting dates and attendance rosters for the RAC'S most recent fiscal year;

(ii) committee membership rosters which included each member's organization or constituency; or

(iii) lists of issues being reviewed in the system performance improvement meetings.

(E) Submit all required EMS allocation eligibility items addressed in paragraph (2)(B)-(C) of this subsection.

(4) To be eligible to distribute the EMS and TSA allocations, a RAC must be incorporated as an entity that is exempt from federal income tax under §501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under §501(c)(3) of the code.

(5) Hospital Allocation. To be eligible for funding from the hospital allocation, a hospital must be a department designated trauma facility or in active pursuit of a department designation as a trauma facility or a Department of Defense hospital that is a department designated trauma facility or in active pursuit of a department designation as a trauma facility.

(A) To receive funding from the hospital allocation, an application must be submitted within the time frame specified by the department and include the following:

(i) name of facility;

(ii) location of facility including mailing address, city and county;

(iii) Texas Provider Identifier (TPI number) or accepted federal identification number.

(B) The application must be signed and sworn to before a Texas Notary Public by the chief financial officer, chief executive officer and the chairman of the facility's board of directors.

(C) A copy of the application shall be distributed by Level I, II, or III facilities to the trauma medical director and Level IV facilities to the physician director.

(D) Additional information may be requested at the department's discretion.

(E) A TDH-designated trauma facility in receipt of funding from the hospital allocation that fails to maintain designation through December 31, 2005, must return an amount as follows to the account by no later than January 31, 2006:

(i) 1 to 60 days lapsed designation: 0% of the facility's hospital allocation for FY04 and FY05;

(ii) 60 to 180 days lapsed designation: 25% of the facility's hospital allocation for FY04 and FY05 plus a penalty of 10%;

(iii) greater than 180 days lapsed designation: 100% of the facility's hospital allocation for FY04 and FY05 plus a penalty of 10%; and

(iv) the department may grant an exception to subparagraph (E) of this subsection if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(F) A facility in active pursuit of designation but has not achieved TDH-trauma designation by December 31, 2005, must return to the account by no later than January 31, 2006, all funds received from the hospital allocation in FY04 and FY05 plus a penalty of 10%.

(e) Calculation Methods. Calculation of county shares of the EMS allocation, the RAC shares of the TSA allocation, and the hospital allocation.

(1) EMS allocation.

(A) Counties will be classified as urban or rural based on the latest official federal census population figures.

(B) The EMS allocation will be derived by adjusting the weight of the statutory criteria in such a fashion that, in so far as possible, 40% of the funds are allocated to urban counties and 60% are allocated to rural counties.

(C) An individual county's share of the EMS allocation shall be based on its geographic size, population, and number of emergency health care runs multiplied by adjustment factors, determined by the department, so the distribution approximates the required percentages to urban and rural counties.

(D) The formula shall be: ((the county's population multiplied by an adjustment factor) plus (the county's geographic size multiplied by an adjustment factor) plus (the county's total emergency health care runs multiplied by an adjustment factor) divided by 3) multiplied by the total EMS allocation). The adjustment factors will be manipulated so that the distribution approximates the required percentages to urban and rural counties. Total emergency health care runs shall be the number of emergency runs electronically transmitted to the department in a given calendar year by EMS providers.

(2) TSA allocation.

(A) A RAC's share of the TSA allocation shall be based on its relative geographic size, population, and trauma care provided as compared to all other TSAs.

(B) The formula shall be: ((the TSA's percentage of the state's total population) plus (the TSA's percentage of the state's total geographic size) plus (the TSA's percentage of the state's total trauma care) divided by 3) multiplied by the total TSA allocation). Total trauma care shall be the number of trauma patient records electronically transmitted to the department in a given calendar year by EMS providers and hospitals.

(3) Hospital allocation.

(A) There will be one annual application process from which all distributions from the hospital allocation, plus any unexpended portion of the EMS and TSA allocations, in a given fiscal year will be made. The department will notify all eligible designated trauma facilities and those hospitals in active pursuit of designation at least 90 days prior to the due date of the annual application. Based on the information provided in the application, each facility shall receive:

(i) an equal amount, with an upper limit of $50,000, from up to 15 percent of the hospital allocation; and

(ii) an amount for uncompensated trauma care as determined in subparagraphs (B)-(C) of this paragraph, less the amount received in clause (i) of this subparagraph.

(B) Any funds not allocated in subparagraph (A)(i) of this paragraph shall be included in the distribution formula in subparagraph (D) of this paragraph.

(C) If the total cost of uncompensated trauma care exceeds the amount appropriated from the account, minus the amount referred to in subparagraph (A)(i) of this paragraph, the department shall allocate funds based on a facility's percentage of uncompensated trauma care costs in relation to the total uncompensated trauma care cost reported by qualified hospitals that year.

(D) In the first year of distribution, the hospital allocation formula for Level I, II, III and IV trauma facilities and those facilities in active pursuit of designation shall be: ((the facility's reported costs of uncompensated trauma care) divided by (the total reported cost of uncompensated trauma care by qualified hospitals that year)) multiplied by (total money available for facilities minus the amount referred to in subparagraph (A)(i) of this paragraph).

(E) In subsequent years of distribution, the hospital allocation formula for Level I, II, III and IV trauma facilities and those facilities in active pursuit of designation shall be: ((the facility's reported costs of uncompensated trauma care) minus (any collections received by the hospitals for any portion of their uncompensated care previously reported for the purposes of this section) divided by (the total reported cost of uncompensated trauma care by qualified hospitals that year)) multiplied by (total money available for facilities minus the amount distributed in subparagraph (A)(i) of this paragraph).

(F) For purposes of subparagraphs (D)-(E) of this paragraph, the reporting period of a facility's uncompensated trauma care shall apply to costs incurred during the preceding calendar year.

(G) Hospitals should have a physician incentive plan that supports the facility's participation in the trauma system.

(f) Loss of funding eligibility. If the department finds that an EMS provider, RAC, or hospital has violated the Health and Safety Code, §780.004, or fails to comply with this section, the department may withhold account monies for a period of one to three years depending upon the seriousness of the infraction.

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 289. RADIATION CONTROL
SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.252

The Texas Department of Health (department) adopts an amendment to §289.252, concerning licensing of radioactive material. The amendment to §289.252 is adopted with changes to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 868), as a result of comments received during the 30-day comment period.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.252 has been reviewed and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule were necessary as outlined in this preamble.

The department published a Notice of Intention to Review for §289.252 regarding Government Code, §2001.039, in the *Texas Register* (28 TexReg 11118) on December 12, 2003. No comments were received by the department on this section following publication of the notice.

The revision incorporates legislation passed by the 78th Legislature, Regular Session, 2003. House Bill (HB) 2292 added Health and Safety Code, §12.0112, and requires two-year terms for radioactive material licenses and requires recovery of regulatory program costs for the two-year term of the license. The department has historically required renewal of specific licenses that includes submission to the department of updated technical information regarding the radioactive material possessed, operating, safety and emergency procedures, and personnel responsible for the security of safe use of the radioactive materials. In order to incorporate the provisions of HB 2292 concerning two-year terms and to continue requiring a renewal that includes pertinent technical information, the department is implementing an administrative renewal and a technical renewal at longer intervals. The licensee will be required to renew the license every two years by paying the required fee and having a satisfactory compliance history. This administrative renewal will not involve review of technical information regarding the license. At a longer interval, the licensee will be required to submit certain technical information for review. This technical renewal date will be specified in the license. Maintaining the more resource-intensive technical renewal allows the department to ensure continued security and safe use of radioactive material. The change to the rule is reflected in revised subsections (y) and (z).

House Bill 253, 78th Legislature, Regular Session, 2003, revised Health and Safety Code §401.110, and requires the department to deny a radioactive material application, amendment or renewal if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations

of the Radiation Control Act or the department's radiation control rules. The department has defined "a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations..." by adding a requirement that states the department will deny an application if at least three department actions are issued, within the previous six years, that assess administrative or civil penalties against the licensee or that revoke or suspend the radioactive material license. The change to the rule is reflected in new subsection (x)(7).

The revision changes references to the formal hearing procedures throughout the rule to properly cite the references. In subsection (f)(1), the sentence "A single individual may be designated as RSO for more than one license if authorized by the agency." is added to clearly state the department's current practice in approving an individual to be a radiation safety officer (RSO) for multiple licenses. New subsection (f)(3)(L) concerning inventory is added as a duty of the RSO to ensure both licensees and the department have an accounting of all authorized sources. This requirement is being added to also enhance security by increasing accountability for sources of radiation.

Several revisions are made to the subsection concerning specific licenses for the manufacture and commercial distribution of devices to persons generally licensed. The requirements are items of compatibility with the United States Nuclear Regulatory Commission (NRC) and as an agreement state, Texas is required to adopt them. These revisions include new subsection (l)(1)(D) and (E) concerning labeling, new (l)(4)(G) concerning enforcement, and new subsection (l)(5) concerning alternative approaches to informing customers. The revisions also include addition of new and clarification of existing language concerning reports that are required by the licensee.

Subsection (x)(4) is revised to add the words "by the licensee or its parent company, if the parent company is involved in the bankruptcy" at the end of the sentence to be consistent with language used throughout this chapter. New subsection (y)(5)(A) adds the words "or has been revoked" after "expired" to clearly state that the license can also be revoked as is intended by the rule. Subsection (dd) adds the word ", suspension," after "Modification" to state the complete list of options for this subsection. New subparagraph (D) is added to subsection (dd) to state that a license may also be modified, suspended, or revoked in whole or in part as a result of existing conditions that constitute a substantial threat to the public health or safety or the environment to be consistent with language used throughout the chapter. In subsection (gg)(6)(B)(ii), "Fund" is replaced with "Account" after "Care" to reflect the name of the account changed by House Bill 1678 which revised Health and Safety Code, §401.305. In the figure for subsection (ii)(2), the radionuclides "Th-232" and "U-238" are deleted from the category of the 0.01µCi limit and moved to the category of the 1.0 mCi limit, so that these radionuclides are included in the correct limit category.

Concerning the entire section, several changes were made to rule citations to state the correct citations and to renumber as needed due to language being added or deleted throughout the section. Other minor grammatical changes have been made throughout the section.

This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, other factors, or to incorporate requirements that are items of compatibility with NRC because as an agreement state, Texas must adopt compatible requirements.

The department is making the following changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning §289.252(d)(9)(C), the department deleted "(relating to the Texas Board of Health)" at the end of the last sentence to reflect that the Texas Board of Health will cease to exist as a result of the consolidation of state agencies effective September 1, 2004.

Change: Concerning new §289.252(f)(3)(L), the department added new clause (iv) to include the date inventory is performed in order to serve as documentation that the inventory is being performed every six months.

Change: Concerning §289.252(l)(7)(B)(iv), the department deleted the word "and" for grammatical correctness.

Change: Concerning §289.252(l)(7)(C)(ii), the department deleted the word "; and" and added a period at the end of the clause for grammatical correctness.

Change: Concerning §289.252(l)(7)(C)(iv), the department deleted the period at the end of the clause and added the word "; and" for grammatical correctness.

Change: Concerning §289.252(x)(7), in the second sentence, the department deleted the words "or judicial orders" and replaced them with the word "actions" after "...at least three agency" and added ", within the previous six years," after the first "applicant" to clarify and to state a specific time period to be reviewed.

Change: Concerning §289.252(y)(1), the department added "Except for subsection (z)(5) of this section," to the beginning of the third sentence to clarify the intent of the requirement. The department also added a final sentence stating "The requirements in this subsection are subject to the provisions of Government Code, §2001.054." to emphasize that the provisions of the Administrative Procedure Act concerning timely renewal, notice, and opportunity for hearing apply to administrative renewals.

Change: Concerning §289.252(z)(1), second sentence, the word "existing" is deleted before the word "license" and the word "condition" is deleted after the second "license" to clarify that the renewal date is specified in the license and not necessarily in a license condition.

Change: Concerning §289.252(z)(2), second sentence, the department moved the words "or for a new license authorizing the same activities" to appear after the words "technical renewal" to state more clearly that the rule applies whether the licensee has filed an application for a technical renewal or for a new license authorizing the same activities and has also paid the fee required by §289.204. The department also deleted the words "in entirety" after "technical renewal" as this term is unnecessary.

Change: Concerning §289.252(z)(4), the department deleted the proposed language and replaced it with language that better defines the requirements for the administrative and technical renewals.

Change: Concerning new §289.252(z)(5), the department added this paragraph to better define the requirements for administrative and technical renewals. Proposed §289.252(z)(5) was subsequently renumbered.

Change: Concerning new §289.252(z)(7), the department added the paragraph to emphasize that the provisions of the Administrative Procedure Act concerning timely renewal, notice, and opportunity for hearing apply to technical renewals.

The following comments were received concerning the proposed section. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §289.252(d)(6), although this paragraph was designated as a "(No change.)" section during the proposed comment period, a commenter stated that the requirement for a majority of licensees to demonstrate financial qualification passed on the last rewrite of this section and became effective in December 2002, would again like to comment that this requirement is punitive, costly, and creates the potential for small businesses to be forced to do exactly what the department is trying to avoid. The commenter further added that if small businesses have to allocate resources to financial qualification, and there is no reasonable economical pathway for disposing of the material, they may be forced to discontinue business and abandon the material to the State.

Additionally, the commenter stated that allowing new companies to meet the financial qualification requirements by submitting a business plan specifying expected expenses versus capitalization and anticipated revenues is shaky at best. Business plans can present whatever picture the company wants, and there is no history to substantiate operating integrity.

Response: The department disagrees with the commenter. The financial qualification requirement is mandated by Health and Safety Code, §401.1008 (as amended by House Bill 1099 (77th Legislature 2001)). The requirement for financial qualification allows an applicant or licensee to attest to its financial qualifications or reference documentation submitted for financial assurance. The requirement for financial assurance is a compatibility item with the NRC and specifically ensures that certain applicants or licensees have adequate funding for decommissioning, including disposal. The purpose of the financial qualification requirement is to ensure that licensees and applicants have sufficient economic means to be able to conduct the licensed activities throughout the life of the license, including appropriate acquisition of material, safe management and use of the material, decontamination if necessary, and appropriate disposal of the material. Both requirements are intended to ensure that in the event a licensee abandons the sources of radiation or is otherwise unable to fulfill its responsibility for appropriate and safe disposition of the sources, adequate funding is available for the cost of decontamination and/or disposal of the sources of radiation. A company's recovery of the cost for disposal should be a business decision of the company. No change was made to the rule as a result of the comment.

Comment: Concerning new §289.252(f)(3)(L), one commenter stated that this subparagraph requires the following information to be maintained in physical inventory records: "(i) isotope(s); (ii) quantity(ies); (iii) activity(ies); (iv) form(s); (v) last date(s) of use; (vi) name of individual making the inventory; and (vii) signature of individual making the inventory." The commenter adds that industrial licensees, particularly fixed gauge licensees, would be adversely affected by this proposed rule.

The commenter stated that the requirement to include item "(ii) quantity" in the inventory record would be unnecessary since each radioactive source is, and should be, individually inventoried. The requirement to include item "(iv) form" does not add any useful information since the radioactive material form is specified in the Registry of Radioactive Sealed Sources and Device Safety Evaluation of a Device.

Additionally, the commenter stated that the requirement to include "(v) last date(s) of use" is onerous for industrial licensees that typically use the devices continuously as part of a manufacturing or quality control process. If the Department of Health determines that it is necessary to document the last date of use of a device that is not actively in use, such as those devices that are placed in storage, record keeping requirements such as those that apply to stored generally licensed devices should be proposed.

Finally, the commenter stated that the requirement to include item "(vii) signature of individual making the inventory" would prohibit the use of electronic databases to maintain physical inventory records. It may serve the Department's purpose to document the identity of the person making the record (as proposed in §289.226(m)(1)(D)) as an alternative to the signature of the individual making the inventory.

A second commenter stated that this new section appears to address only "sources" and asked if it is intended to include devices containing sealed sources. If so, the commenter asked if the device model and serial numbers are not now required. This commenter also questioned what the requirement for "last date(s) of use" is intended to accomplish if the device or source is in continuous use.

Response: The department agrees with the comments and has deleted proposed new clauses (iv), (v), and (vii) for the reasons indicated by the commenters. For clarification, the department also deleted the word "material" and added the word "sealed" after the first and second "radioactive" in subparagraph (L) of this paragraph. The department did not intend to include the devices that contain the sealed sources.

Comment: Concerning §289.252(l)(1)(D) and (E), a commenter expressed that it is not clear what these subparagraphs address. The commenter asks for an explanation of a "separable source housing" and asks for clarification of separable from what.

Response: The department acknowledges the comment; however, no change was made to the rule as a result of the comment. These subparagraphs were added to incorporate requirements that are items of compatibility with NRC regulations because as an agreement state, Texas must adopt compatible requirements. Title 10, CFR, §32.51(a)(4) and (5) (65 FR 79162) amended the existing labeling requirements to require an additional label on any separable source housing to carry out the initial intent of the previous requirement for devices, where the source may be separable in a housing that does not include the label. It is important that this housing, if separated from the remainder of the device, can also be identified.

Comment: Concerning §289.252(z)(1), a commenter stated that the legislation changing the license renewal interval to two years and the department's implementation of administrative and technical renewals, was not well thought out and should be changed in a future legislative session. Additionally, the commenter stated that this is very punitive to radioactive materials licensees and simply adds workload to both licensees and the department staff with no added benefit to public health and safety.

Response: The department acknowledges the comment; however, no change was made to the rule as a result of the comment. The department has historically required renewal of specific licenses that includes submission to the department of updated technical information regarding the radioactive material possessed, operating, safety and emergency procedures, and personnel responsible for the security of safe use of the radioactive materials. In order to incorporate the provisions of HB 2292 concerning two-year terms and to continue requiring a renewal that includes pertinent technical information, the department is implementing an administrative renewal and a technical renewal.

The commenters included representatives from Radiation Technology, Inc. and 3M Corporate Health Physics. The commenters were neither for nor against the rule in its entirety; however, the commenters raised questions and expressed concern regarding the proposal as discussed in the summary of comments.

The amendment is adopted under the Health and Safety Code, §401.051, which provides the Texas Board of Health (board) with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

§289.252. Licensing of Radioactive Material.

(a) Purpose. The intent of this section is as follows.

(1) This section provides for the specific licensing of radioactive material.

(2) Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized by the following:

(A) a specific license issued in accordance with this section and/or any of the following sections:

(i) §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities);

(ii) §289.255 of this title (relating to Radiation Safety, Requirements and Licensing and Registration Procedures for Industrial Radiography);

(iii) §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material);

(iv) §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators);

(v) §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM));

(vi) §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); or

(B) a general license or general license acknowledgment issued in accordance with §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements).

(3) A person who receives, possesses, uses, transfers, owns, or acquires radioactive materials prior to receiving a license is subject to the requirements of this chapter.

(b) Scope. In addition to the requirements of this section, the following additional requirements are applicable.

(1) All licensees, unless otherwise specified, are subject to the requirements in the following sections:

(A) §289.201 of this title (relating to General Provisions for Radioactive Material);

(B) §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Material);

(C) §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections);

(D) §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(E) §289.205 of this title (relating to Hearing and Enforcement Procedures); and

(F) §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(2) Licensees engaged in well logging service operations and tracer studies are subject to the requirements of §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(3) Licensees engaged in radioactive waste processing and/or storage are subject to the requirements of §289.254 of this title.

(4) Licensees engaged in industrial radiographic operations are subject to the requirements of §289.255 of this title.

(5) Licensees using radioactive material for medical or veterinary use are subject to the requirements of §289.256 of this title.

(6) Licensees using sealed sources in irradiators are subject to the requirements of §289.258 of this title.

(7) Licensees possessing or using naturally occurring radioactive material are subject to the requirements of §289.259 of this title.

(8) Licensees engaged in uranium recovery and byproduct material disposal are subject to the requirements of §289.260 of this title.

(c) Types of licenses. Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in §289.251 and §289.259 of this title are effective without the filing of applications with the agency or the issuance of licensing documents to the particular persons, although the filing of an application for acknowledgement with the agency may be required for a particular general license. The general licensee is subject to any other applicable portions of this chapter and any limitations of the general license.

(2) Specific licenses require the submission of an application to the agency and the issuance of a licensing document by the agency. The licensee is subject to all applicable portions of this chapter as well as any limitations specified in the licensing document.

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied or the license should be issued.

(1) Applications for specific licenses shall be filed in a manner prescribed by the agency.

(2) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(3) An application for a license may include a request for a license authorizing one or more activities. The agency may require the issuance of separate specific licenses for those activities.

(4) Each application for a specific license, other than a license exempted from §289.204 of this title, shall be accompanied by the fee prescribed in §289.204 of this title.

(5) Each application shall be accompanied by a completed BRC Form 252-1 (Business Information Form).

(6) Each applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license. Each licensee shall demonstrate to the agency that it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in subsection (ii)(8) of this section. The requirement for demonstration of financial qualification is separate from the requirement specified in subsection (gg) of this section for certain applicants or licensees to provide financial assurance.

(7) If facility drawings submitted in conjunction with the application for a license are prepared by a professional engineer or engineering firm, those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(8) Applications for licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapter 2001.

(9) Notwithstanding the provisions of §289.204(d)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (8) of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with Title 1, Texas Administrative Code, Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(10) Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements in this chapter have been addressed.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with this chapter in such a manner as to minimize danger to occupational and public health and safety and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to occupational and public health and safety and the environment;

(3) the issuance of the license will not be inimical to the health and safety of the public;

(4) the applicant satisfies any applicable special requirement in this section and other sections as specified in subsection (a)(2)(A) of this section;

(5) the radiation safety information submitted for requested sealed source(s) or device(s) containing radioactive material is in accordance with subsection (v) of this section;

(6) qualifications of the designated radiation safety officer (RSO) as specified in subsection (f) of this section are adequate for the purpose requested in the application;

(7) the applicant submits an adequate operating, safety, and emergency procedures manual;

(8) the applicant's permanent facility is located in Texas (if the applicant's permanent facility is not located in Texas, reciprocal recognition shall be sought as required by subsection (ee) of this section); and

(9) the owner of the property is aware that radioactive material is stored on the property, if the proposed storage facility is not owned by the applicant. The applicant shall provide a written statement from the owner, or from the owner's agent, indicating such. This paragraph does not apply to property owned or held by a government entity or to property on which radioactive material is used under an authorization for temporary job site use.

(10) there is no reason to deny the license as specified in subsection (d)(10) or (x)(7) of this section.

(f) Radiation safety officer.

(1) An RSO shall be designated for every license issued by the agency. A single individual may be designated as RSO for more than one license if authorized by the agency.

(2) The RSO's documented qualifications shall include as a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test;

(B) completion of the training and testing requirements specified in this chapter for the activities for which the license application is submitted; and

(C) training and experience necessary to supervise the radiation safety aspects of the licensed activity.

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) to establish and oversee operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(B) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(C) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §289.203 of this title;

(E) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(F) to investigate and cause a report to be submitted to the agency for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(G) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(H) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(I) to ensure that records are maintained as required by this chapter;

(J) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;

(K) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(L) to perform an inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to the following:

(i) isotope(s);

(ii) quantity(ies);

(iii) activity(ies); and

(iv) date inventory is performed.

(M) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(N) to serve as the primary contact with the agency.

(4) Requirements for RSOs for specific licenses for broad scope authorization for research and development. In addition to the requirements in paragraphs (1) and (3) of this subsection, the RSO's qualifications for specific licenses for broad scope authorization for research and development shall include evidence of the following:

(A) a bachelor's degree in health physics, radiological health, physical science or a biological science with a physical science minor and four years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed;

(B) a master's degree in health physics or radiological health and three years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed;

(C) two years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed and one of the following:

(i) doctorate degree in health physics or radiological health;

(ii) comprehensive certification by the American Board of Health Physics;

(iii) certification by the American Board of Radiology in Medical Nuclear Physics;

(iv) certification by the American Board of Science in Nuclear Medicine in Radiation Protection;

(v) certification by the American Board of Medical Physics in Medical Health Physics; or

(D) equivalent qualifications as approved by the agency.

(5) The qualifications in paragraph (4)(A)-(D) do not apply to individuals who have been adequately trained and designated as RSOs on licenses issued prior to October 1, 2000.

(g) The duties and responsibilities of the Radiation Safety Committee (RSC) include but are not limited to the following:

(1) meeting as often as necessary to conduct business but no less than three times a year;

(2) reviewing summaries of the following information presented by the RSO:

(A) over-exposures;

(B) significant incidents, including spills, contamination, or medical events; and

(C) items of non-compliance following an inspection;

(3) reviewing the program for maintaining doses ALARA, and providing any necessary recommendations to ensure doses are ALARA;

(4) reviewing the overall compliance status for authorized users;

(5) sharing responsibility with the RSO to conduct periodic audits of the radiation safety program;

(6) reviewing the audit of the radiation safety program and acting upon the findings;

(7) developing criteria to evaluate training and experience of new authorized user applicants;

(8) evaluating and approving authorized user applicants who request authorization to use radioactive material at the facility;

(9) evaluating new uses of radioactive material; and

(10) reviewing and approving permitted program and procedural changes prior to implementation.

(h) Specific licenses for broad scope authorization for multiple quantities or types of radioactive material for use in research and development.

(1) In addition to the requirements in subsection (e) of this section, a specific license for multiple quantities or types of radioactive material for use in research and development, not to include the internal or external administration of radiation or radioactive material to humans, will be issued if the agency approves the following documentation submitted by the applicant:

(A) that staff has substantial experience in the use of a variety of radioisotopes for a variety of research and development uses;

(B) of a full-time RSO meeting the requirements of subsection (f)(4) of this section;

(C) establishment of an RSC, including names and qualifications, with duties and responsibilities in accordance with subsection (g) of this section. The RSC shall be composed of an RSO, a representative of executive management, and one or more persons trained or experienced in the safe use of radioactive materials.

(2) Unless specifically authorized, persons licensed according to paragraph (1) of this subsection shall not conduct tracer studies involving direct release of radioactive material to the environment.

(3) Unless specifically authorized, in accordance with a separate license, persons licensed according to paragraph (1) of this subsection shall not:

(A) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;

(B) conduct activities for which a specific license issued by the agency in accordance with subsections (i)-(u) of this section and §§289.254, 289.255, 289.256, and §289.259 of this title is required;

(C) add or cause the addition of radioactive material to any food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being; or

(D) commercially distribute radioactive material.

(i) Specific licenses for introduction of radioactive material into products in exempt concentrations.

(1) In addition to the requirements in subsection (e) of this section, a specific license authorizing the introduction of radioactive material into a product or material in the possession of the licensee or another to be transferred to persons exempt from this chapter in accordance with §289.251(e)(1)(A) of this title will be issued if the agency approves the following information submitted by the applicant:

(A) a description of the product or material into which the radioactive material will be introduced;

(B) intended use of the radioactive material and the product or material into which it is introduced;

(C) method of introduction;

(D) initial concentration of the radioactive material in the product or material;

(E) control methods to assure that no more than the specified concentration is introduced into the product or material;

(F) estimated time interval between introduction and transfer of the product or material;

(G) estimated concentration of the radioactive material in the product or material at the time of transfer; and

(H) procedures for disposition of unwanted or unused radioactive material; and

(2) the applicant provides reasonable assurance that:

(A) the concentrations of radioactive material at the time of transfer will not exceed the concentrations in §289.251(m)(1) of this title;

(B) reconcentration of the radioactive material in concentrations exceeding those in §289.251(m)(1) of this title will not occur;

(C) the use of lower concentrations is not feasible; and

(D) the product or material is not to be incorporated in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human.

(3) Each person licensed in accordance with this subsection shall file an annual report with the agency and shall identify the type and quantity of each product or material into which radioactive material has been introduced during the reporting period. The report shall cover the year ending June 30, shall be filed within 30 days thereafter, and shall include the following:

(A) name and address of the person who owned or possessed the product or material when the radioactive material was introduced;

(B) the type and quantity of radionuclide introduced into each such product or material; and

(C) the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee.

(4) If no transfers of radioactive material have been made in accordance with this subsection during the reporting period, the report shall so indicate.

(j) Specific licenses for commercial distribution of radioactive material in exempt quantities.

(1) Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission, Washington, DC 20555.

(2) In addition to the requirements in subsection (e) of this section, a specific license to distribute naturally occurring or accelerator-produced radioactive material (NARM) to persons exempt from

this chapter in accordance with §289.251(e)(2) of this title will be issued if the agency approves the following information submitted by the applicant:

(A) that the radioactive material is not contained in any food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human;

(B) that the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution;

(C) copies of prototype labels and brochures; and

(D) procedures for disposition of unwanted or unused radioactive material.

(3) The license issued in accordance with paragraph (2) of this subsection is subject to the following conditions.

(A) No more than 10 exempt quantities shall be sold or commercially distributed in any single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantities provided the sum of the fractions shall not exceed unity.

(B) Each exempt quantity shall be separately and individually packaged. No more than 10 such packaged exempt quantities shall be contained in any other package for commercial distribution to persons exempt from this chapter in accordance with §289.251(e)(2) of this title. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour (mrem/hr).

(C) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label that:

(i) identifies the radionuclide and the quantity of radioactivity; and

(ii) bears the words "Radioactive Material."

(D) In addition to the labeling information required by subparagraph (C) of this paragraph, the label affixed to the immediate container, or an accompanying brochure, shall:

(i) state that the contents are exempt from the United States Nuclear Regulatory Commission (NRC), agreement state, or licensing state requirements;

(ii) bear the words "Radioactive Material--Not for Human Use--Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited--Exempt Quantities Should Not Be Combined"; and

(iii) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(4) Each person licensed in accordance with this subsection shall maintain records identifying, by name and address, each person to whom radioactive material is commercially distributed for use in accordance with §289.251(e)(2) of this title or the equivalent regulations of an agreement state or a licensing state, and stating the kinds and quantities of radioactive material commercially distributed. An annual summary report stating the total quantity of each radionuclide commercially distributed in accordance with the specific license shall be filed with the agency. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no commercial distributions of radioactive material have been made in accordance with this subsection during the reporting period, the report shall so indicate.

(5) Licenses issued in accordance with this subsection do not authorize the following:

(A) combining of exempt quantities of radioactive material in a single device;

(B) any program advising persons to combine exempt quantity sources and providing devices for them to do so; and

(C) the possession and use of combined exempt sources, in a single unregistered device, by persons exempt from licensing in accordance with §289.251(e)(2) of this title.

(k) Specific licenses for incorporation of NARM into gas and aerosol detectors. In addition to the requirements in subsection (e) of this section, a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt from this chapter in accordance with §289.251(e)(3)(C) of this title will be issued if the agency approves the information submitted by the applicant. This information shall satisfy the requirements equivalent to those contained in Title 10, Code of Federal Regulations (CFR), §32.26.The maximum quantity of radium-226 in each device shall not exceed 0.1 µCi.

(l) Specific licenses for the manufacture and commercial distribution of devices to persons generally licensed in accordance with §289.251(f)(4)(H) of this title.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute devices containing radioactive material to persons generally licensed in accordance with §289.251(f)(4)(H) of this title or equivalent requirements of the NRC, an agreement state, or a licensing state will be issued if the agency approves the following information submitted by the applicant:

(A) the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(i) the device can be safely operated by persons not having training in radiological protection;

(ii) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one year a dose in excess of 10% of the limits specified in §289.202(f) of this title; and

(iii) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

(I) 15 rems to the whole body; head and trunk; active blood-forming organs; gonads; or lens of eye;

(II) 200 rems to the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter (cm^2); or

(III) 50 rems to other organs;

(B) procedures for disposition of unused or unwanted radioactive material;

(C) each device bears a durable, legible, clearly visible label or labels approved by the agency that contain the following in a clearly identified and separate statement:

(i) instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) the requirement, or lack of requirement, for leak testing, or for testing any "on-off" mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(iii) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) For radioactive materials other than NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(I) (No change.)

(II) NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(II) (No change.)

(III) The model and serial number and name of manufacturer or distributor may be omitted from this label provided they are elsewhere stated in labeling affixed to the device.

(D) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial numbers, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in §289.202(z) of this title, and the name of the manufacturer or initial distributor.

(E) Each device meeting the criteria of §289.251(g)(1) of this title, bears a permanent (for example, embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in §289.202(z) of this title.

(2) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material, or for both, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the agency will consider information that includes, but is not limited to the following:

(A) primary containment (sealed source capsule);

(B) protection of primary containment;

(C) method of sealing containment;

(D) containment construction materials;

(E) form of contained radioactive material;

(F) maximum temperature withstood during prototype tests;

(G) maximum pressure withstood during prototype tests;

(H) maximum quantity of contained radioactive material;

(I) radiotoxicity of contained radioactive material; and

(J) operating experience with identical devices or similarly designed and constructed devices.

(3) In the event the applicant desires that the general licensee in accordance with §289.251(f)(4)(H) of this title or in accordance with equivalent regulations of the NRC, an agreement state, or a licensing state, be authorized to mount the device, collect the sample to be analyzed by a specific licensee for radioactive material leakage, perform maintenance of the device consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of sealed source holder mounting brackets, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated annual doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices in accordance with the general license, is unlikely to cause that individual to receive an annual dose in excess of 10% of the limits specified in §289.202(f) of this title.

(4) Before the device may be transferred, each person licensed in accordance with this subsection to commercially distribute devices to generally licensed persons shall furnish:

(A) a copy of the general license in §289.251(f)(4)(H) of this title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license in §289.251(f)(4)(H) of this title;

(B) a copy of the general license in the NRC's, agreement state's, or licensing state's regulation equivalent to §289.251(f)(4)(H) of this title, or alternatively, a copy of the general license in §289.251(f)(4)(H) of this title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license of the NRC, the agreement state, or the licensing state. If certain requirements of the regulations do not apply to the particular device, those requirements may be omitted. If a copy of the general license in §289.251(f)(4)(H) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the NRC, agreement state, or licensing state in accordance with requirements substantially the same as those in §289.251(f)(4)(H) of this title;

(C) a copy of §289.251(g) of this title;

(D) a list of the services that can only be performed by a specific licensee;

(E) information on acceptable disposal options including estimated costs of disposal;

(F) the name or position, address, and phone number of a contact person at the agency, an agreement state, or licensing state, or the NRC from which additional information may be obtained; and

(G) an indication that it is the NRC's policy to issue high civil penalties for improper disposal if the device is commercially distributed to a general licensee of the NRC.

(5) An alternative approach to informing customers may be submitted by the licensee for approval by the agency.

(6) In the case of a transfer through an intermediate person, each licensee who commercially distributes radioactive material in a device for use in accordance with the general license in §289.251(f)(4)(H) of this title, shall furnish the information in paragraph (4) of this subsection to the intended user prior to the initial transfer to the intermediate person.

(7) Each person licensed in accordance with this subsection to commercially distribute devices to generally licensed persons shall:

(A) report to the agency all commercial distributions of devices to persons for use in accordance with the general license in §289.251(f)(4)(H) of this title and all receipts of devices from general licensees licensed in accordance with §289.251(f)(4)(H) of this title.

(i) The report shall:

(I) cover each calendar quarter;

(II) be filed within 30 days thereafter;

(III) be submitted on a form prescribed by the agency or in a clear and legible report containing all of the data required by the form;

(IV) clearly indicate the period covered by the report;

(V) clearly identify the specific licensee submitting the report and include the license number of the specific licensee;

(VI) identify each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use;

(VII) identify an individual by name, title, and phone number who has knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(VIII) identify the type, model and serial number of device, and serial number of sealed source commercially distributed;

(IX) identify the quantity and type of radioactive material contained in the device; and

(X) include the date of transfer.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall also include the information in accordance with paragraph (7)(A)(i) of this subsection for both the intended user and each intermediate person and clearly designate the intermediate person(s).

(iii) If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(4)(H) of this title during the reporting period, the report shall so indicate.

(iv) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(B) report the following to the NRC to include covering each calendar quarter to be filed within 30 days thereafter, clearly indicating the period covered by the report, the identity of the specific licensee submitting the report, and the license number of the specific licensee:

(i) all commercial distributions of such devices to persons for use in accordance with the NRC general license in Title 10, CFR, §31.5 and all receipts of devices from general licensees in areas under NRC jurisdiction including the following:

(I) identity of each general licensee by name and address;

(II) the type, model and serial number of device, and serial number of sealed source commercially distributed;

(III) the quantity and type of radioactive material contained in the device;

(IV) the date of transfer; or

(ii) if the licensee makes changes to a device possessed in accordance with the general license in §289.251(f)(4)(H) of this title, such that the label must be changed to update required information, the report shall identify the licensee, the device, and the changes to information on the device label;

(iii) in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor;

(iv) if no commercial distributions have been made to the NRC licensees during the reporting period; the report shall so indicate;

(C) report to the appropriate agreement state or licensing state all transfers of devices manufactured and commercially distributed in accordance with this subsection for use in accordance with a general license in that state's requirements equivalent to §289.251(f)(4)(H) of this title and all receipts of devices from general licensees.

(i) The report shall:

(I) be submitted within 30 days after the end of each calendar quarter in which such a device is commercially distributed to the generally licensed person;

(II) clearly indicate the period covered by the report;

(III) clearly identify the specific licensee submitting the report and include the license number of the specific licensee;

(IV) identify each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use an alternate address for the licensee shall be submitted along with the information on the actual location of use;

(V) identify an individual by name, position, and phone number who has knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(VI) the type, model and serial number of the device, and serial number of sealed source commercially distributed;

(VII) the quantity and type of radioactive material contained in the device; and

(VIII) date of receipt.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall also include the same information

for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii) If no commercial distributions have been made to persons in the agreement state or licensing state during the reporting period, the report shall so indicate.

(iv) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; and

(D) keep records for three years following the date of the recorded event, showing the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use in accordance with the general license provided in §289.251(f)(4)(H) of this title, or equivalent requirements of the NRC, an agreement state, or a licensing state.

(i) The records shall show the following:

(I) date of each commercial distribution;

(II) the isotope and the quantity of radioactivity in each device commercially distributed;

(III) the identity of any intermediate person; and

(IV) compliance with the reporting requirements of this subsection.

(ii) If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(4)(H) of this title during the reporting period, the records shall so indicate.

(8) If a notification of bankruptcy has been made in accordance with subsection (x)(4) of this section or the license is to be terminated, each person licensed under this subsection shall provide, upon request to the NRC and to any appropriate agreement state or licensing state, records of final disposition required under subsection (y)(16)(A) of this section.

(9) Each device that is transferred after February 19, 2002, shall meet the labeling requirements in accordance with paragraph (1)(C)-(E) of this subsection.

(m) Specific licenses for the manufacture, assembly, or repair of luminous safety devices for use in aircraft for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(B) of this title. In addition to the requirements in subsection (e) of this section, a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(B) of this title, will be issued if the agency approves the information submitted by the applicant. The information shall satisfy the requirements of Title 10, CFR, §§32.53, 32.54, 32.55, 32.56, and 32.101 or their equivalent.

(n) Specific licenses for the manufacture of calibration sources containing americium-241, plutonium, or radium-226 for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(D) of this title. In addition to the requirements in subsection (e) of this section, a specific license to manufacture calibration sources containing americium-241, plutonium, or radium-226 to persons generally licensed in accordance with §289.251(f)(4)(D) of this title will be issued if the agency approves the information submitted by the applicant. The information shall satisfy the requirements of Title 10, CFR, §§32.57, 32.58, 32.59, and 32.102, and 10 CFR 70.39 or their equivalent.

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed for use of sealed sources in the healing arts for use as a calibration or reference source will be issued if the agency approves the following information submitted by the applicant:

(1) an evaluation of the radiation safety of each type of sealed source or device including the following:

(A) the radioactive material contained, its chemical and physical form, and amount;

(B) details of design and construction of the sealed source or device;

(C) procedures for, and results of, prototype tests to demonstrate that the sealed source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) for devices containing radioactive material, the radiation profile of a prototype device;

(E) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(F) procedures and standards for calibrating sealed sources and devices;

(G) instructions for handling and storing the sealed source or device from the radiation safety standpoint. These instructions are to be included on a durable label attached to the sealed source or device or attached to a permanent storage container for the sealed source or device, provided that instructions that are too lengthy for the label may be summarized on the label and printed in detail on a brochure that is referenced on the label; and

(H) procedures for disposition of unwanted or unused radioactive material;

(2) documentation that the label affixed to the sealed source or device, or to the permanent storage container for the sealed source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the sealed source or device is licensed by the agency for commercial distribution to persons licensed for use of sealed sources in the healing arts or by equivalent licenses of the NRC, an agreement state, or a licensing state, provided that the labeling for sealed sources that do not require long-term storage may be on a leaflet or brochure that accompanies the sealed source;

(3) documentation that in the event the applicant desires that the sealed source or device be required to be tested for radioactive material leakage at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the sealed source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the sealed source; and

(4) documentation that in determining the acceptable interval for testing radioactive material leakage, information will be considered that includes, but is not limited to the following:

(A) primary containment (sealed source capsule);

(B) protection of primary containment;

(C) method of sealing containment;

(D) containment construction materials;

(E) form of contained radioactive material;

(F) maximum temperature withstood during prototype tests;

(G) maximum pressure withstood during prototype tests;

(H) maximum quantity of contained radioactive material;

(I) radiotoxicity of contained radioactive material; and

(J) operating experience with identical sealed sources or devices or similarly designed and constructed sealed sources or devices.

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(f)(4)(G) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) that the radioactive material will be prepared for distribution in prepackaged units of:

(A) iodine-125 in units not exceeding 10 microcuries (µCi) each;

(B) iodine-131 in units not exceeding 10 µCi each;

(C) carbon-14 in units not exceeding 10 µCi each;

(D) hydrogen-3 (tritium) in units not exceeding 50 µCi each;

(E) iron-59 in units not exceeding 20 µCi each;

(F) cobalt-57 in units not exceeding 10 µCi each;

(G) selenium-75 in units not exceeding 10 µCi each; or

(H) mock iodine-125 in units not exceeding 0.05 µCi of iodine-129 and 0.005 µCi of americium-241 each;

(2) that each prepackaged unit bears a durable, clearly visible label:

(A) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 µCi of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 µCi of hydrogen-3 (tritium); 20 µCi of iron-59; or mock iodine-125 in units not exceeding 0.05 µCi of iodine-129 and 0.005 µCi of americium-241; and

(B) displaying the radiation caution symbol in accordance with §289.202(z) of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals";

(3) that one of the following statements, as appropriate, or a substantially similar statement appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(A) option 1:

Figure: 25 TAC §289.252(p)(3)(A) (No change.)

(B) option 2:

Figure: 25 TAC §289.252(p)(3)(B) (No change.)

(4) that the label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information as to the precautions to be observed in handling and storing the radioactive material. In the case of a mock iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements of §289.202(ff) of this title.

(q) Specific licenses for the manufacture and commercial distribution of ice detection devices. In addition to the requirements of subsection (e) of this section, a specific license to manufacture and commercially distribute ice detection devices to persons generally licensed in accordance with §289.251(f)(4)(E) of this title will be issued if the agency approves the information submitted by the applicant. This information shall satisfy the requirements of Title 10, CFR, §§32.61, 32.62, and 32.103.

(r) Specific licenses for the manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive materials for medical use.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material for use by persons authorized in accordance with §289.256 of this title will be issued if the agency approves the following information submitted by the applicant:

(A) evidence that the applicant is at least one of the following:

(i) registered or licensed with the United States Food and Drug Administration (FDA) as a drug manufacturer;

(ii) registered or licensed with a state agency as a drug manufacturer; or

(iii) licensed as a pharmacy by the Texas State Board of Pharmacy;

(B) radionuclide data relating to the following:

(i) chemical and physical form;

(ii) maximum activity per vial, syringe, generator, or other container of the radioactive drug;

(iii) shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(C) labeling requirements including the following:

(i) that each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution shall include the following:

(I) radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL;"

(II) name of the radioactive drug or its abbreviation;

(III) quantity of radioactivity at a specified date and time (the time may be omitted for radioactive drugs with a half life greater than 100 days); and

(ii) that each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution shall include the following:

(I) radiation symbol and the words, "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL;"

(II) name of the radioactive drug or its abbreviation;

(III) quantity of radioactivity at a specified date and time (the time may be omitted for radioactive drugs with a half life greater than 100 days); and

(IV) an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield.

(2) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs and shall have procedures for the use of the instrumentation. The licensee shall measure, by direct measurement or by a combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(A) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary;

(B) check each instrument for constancy and proper operation at the beginning of each day of use; and

(C) maintain records of the tests and checks in this paragraph for a minimum of three years for inspection by the agency.

(3) A licensee described in paragraph (1)(A)(iii) of this subsection shall prepare radioactive drugs for medical use as described in §289.256 of this title with the following provisions:

(A) radioactive drugs shall be prepared by a nuclear pharmacist(s) designated in the application as the individual user(s) who has completed the training and experience requirements specified in the rules of the Texas State Board of Pharmacy, contained in Title 22, Texas Administrative Code, §291.52;

(B) the radiopharmaceuticals for human use shall be processed and prepared according to instructions that are furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure that accompanies the generator or reagent kit;

(C) if the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency for a period of three years; and

(D) provide to the agency a copy of each individual's certification by the Texas State Board of Pharmacy or the permit issued by a licensee of broad scope, and a copy of the state pharmacy license. If the licensee adds a nuclear pharmacist(s) to the license, this shall be completed no later than 30 days after the date that the licensee allows the individual(s) to work as a nuclear pharmacist.

(4) Nothing in this subsection relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

(s) Specific licenses for the manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture products and devices containing depleted uranium for use in accordance with §289.251(f)(3)(D) of this title or equivalent regulations of the NRC or an agreement state, will be issued if the agency approves the following information submitted by the applicant:

(A) the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the product or device to provide reasonable assurance that possession, use, or commercial distribution of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one year a radiation dose in excess of 10% of the limits specified in §289.202(f) of this title; and

(B) reasonable assurance is provided that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of a product or device whose unique benefits are questionable, the agency will issue a specific license in accordance with paragraph (1) of this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The agency may deny any application for a specific license in accordance with this subsection if the end use(s) of the product or device cannot be reasonably foreseen.

(4) Each person licensed in accordance with paragraph (1) of this subsection shall:

(A) maintain the level of quality control required by the license in the manufacture of the product or device, and in the installation of the depleted uranium into the product or device;

(B) label or mark each unit to:

(i) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) state that the receipt, possession, use, and commercial distribution of the product or device are subject to a general license or the equivalent and the requirements of the NRC or of an agreement state;

(C) assure that before being installed in each product or device, the depleted uranium has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

(D) furnish a copy of the following:

(i) the general license in §289.251(f)(3)(D) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license in §289.251(f)(3)(D) of this title;

(ii) the NRC's or agreement state's requirements equivalent to the general license in §289.251(f)(3)(D) of this title and a copy of the NRC's or agreement state's certificate; or

(iii) alternately, a copy of the general license in §289.251(f)(3)(D) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license of the NRC or an agreement state;

(E) report to the agency all commercial distributions of products or devices to persons for use in accordance with the general license in §289.251(f)(3)(D) of this title.

(i) The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is commercially distributed to the generally licensed person and shall include the following:

(I) identity of each general licensee by name and address;

(II) identity of an individual by name and/or position who may constitute a point of contact between the agency and the general licensee;

(III) the type and model number of devices commercially distributed; and

(IV) the quantity of depleted uranium contained in the product or device.

(ii) If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(3)(D) of this title during the reporting period, the report shall so indicate;

(F) report to the NRC and each responsible agreement state agency all commercial distributions of industrial products or devices to persons for use in accordance with the general license in the NRC's or agreement state's equivalent requirements to §289.251(f)(3)(D) of this title. The report shall meet the provisions of subparagraph (E)(i) and (ii) of this paragraph; and

(G) keep records showing the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use in accordance with the general license provided in §289.251(f)(3)(D) of this title or equivalent requirements of the NRC or of an agreement state. The records shall be maintained for a period of two years for inspection by the agency and shall show the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(t) Specific licenses for the processing of loose radioactive material for manufacture and commercial distribution. In addition to the requirements in subsection (e) of this section, a license to process loose radioactive material for manufacture and commercial distribution of radioactive material to persons authorized to possess such radioactive material in accordance with this chapter will be issued if the agency approves the following information submitted by the applicant:

(1) radionuclides to be used, including the chemical and/or physical form and the maximum activity of each radionuclide;

(2) intended use of each radionuclide and the sealed sources and/or other products to be manufactured that includes:

(A) receipt of radioactive material;

(B) chemical or physical preparations;

(C) sealed source construction;

(D) final assembly or processing;

(E) quality assurance testing;

(F) quality control program;

(G) leak testing;

(H) American National Standards Institute (ANSI) testing procedures;

(I) transportation containers;

(J) shipping procedures; and

(K) disposition of unwanted or unused radioactive material;

(3) scaled drawings of the facility to include, but not be limited to:

(A) air filtration;

(B) ventilation system;

(C) plumbing; and

(D) radioactive material handling systems and, when applicable, remote handling hot cells;

(4) details of the environmental monitoring program; and

(5) documentation of training as specified in subsection (ii)(1) of this section for all personnel who will be handling radioactive materials.

(u) Specific licenses for other manufacture and commercial distribution of radioactive material. In addition to the requirements in subsection (e) of this section, a license to manufacture and commercially distribute radioactive material to persons authorized to possess such radioactive material in accordance with these requirements will be issued if the agency approves the following information submitted by the applicant:

(1) the radionuclides to be used, including the chemical and/or physical form and the maximum activity of each radionuclide;

(2) the intended use of each radionuclide and the sealed sources and/or other products to be manufactured that includes:

(A) receipt of radioactive material;

(B) chemical or physical preparations;

(C) sealed source construction;

(D) final assembly or processing;

(E) quality assurance testing;

(F) quality control program;

(G) leak testing;

(H) ANSI testing procedures;

(I) transportation containers;

(J) shipping procedures; and

(K) disposition of unwanted or unused radioactive material;

(3) scaled drawings of radioactive material handling systems; and

(4) documentation of training as specified in subsection (ii)(1) of this section for all personnel who will be handling radioactive material.

(v) Sealed source or device evaluation. Except as provided in paragraphs (7) and (8) of this subsection, sealed sources and devices shall only be authorized for use on radioactive material licenses in accordance with the information contained in the safety evaluation.

(1) An applicant shall submit a request to the agency for evaluation of radiation safety information on the sealed source or device containing a sealed source.

(2) The request for review shall be submitted in duplicate accompanied by the appropriate fee in §289.204 of this title.

(3) The request for review shall contain sufficient information about the sealed source or device to include the following:

(A) the radioactive material contained, its chemical and physical form, and amount;

(B) details of design and construction;

(C) procedures for, and results of, prototype tests to demonstrate that the sealed source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) details of quality control procedures to assure that production of sealed sources and devices meet the standards of the design and prototype tests;

(E) labeling;

(F) proposed uses; and

(G) procedures for leak testing.

(4) For a device containing radioactive material, the request shall also contain sufficient information about the device to include:

(A) the radiation profile of a prototype device;

(B) method of installation;

(C) service and maintenance requirements; and

(D) operating and safety instructions.

(5) After review of the request, the agency may issue an evaluation documenting the information in paragraphs (3) and (4) of this subsection.

(6) The applicant submitting the request for evaluation of the safety information about the product shall manufacture and distribute or cause the product to be manufactured or distributed in accordance with:

(A) the statements and representations contained in the request;

(B) documentation required to support the request;

(C) the provisions of the evaluation; and

(D) all applicable provisions contained in a radioactive material license.

(7) Custom (manufactured in accordance with the unique specifications of, and use by, a single licensee) sources and devices shall be evaluated using the criteria in paragraphs (1)-(6) of this subsection.

(8) Sealed sources or devices used for calibration and reference sources of 100 µCi or less for beta or gamma-emitting radionuclides and 10 µCi or less for alpha-emitting radionuclide do not require radiation safety evaluations.

(9) Sealed sources or devices used in research and development that have not had safety evaluations.

(A) For sealed sources or devices used in research and development, the following shall be submitted:

(i) the radioactive material contained, its chemical and physical form, and amount;

(ii) details of the design and construction sufficient to determine that no obvious mechanical flaws exist;

(iii) information that demonstrates that sealed sources meet ANSI/HPS N43.6-1997 criteria for the particular category of use and that devices will maintain their integrity during normal use and accident conditions; and

(iv) procedures for use that demonstrate a safe environment for users and others nearby.

(B) For custom (one-of-a-kind) sealed sources or devices used in research and development, the licensee shall be qualified by sufficient training and experience and have sufficient facilities and equipment to safely use the requested quantity of radioactive material in unsealed form.

(w) Issuance of specific licenses.

(1) When the agency determines that an application meets the requirements of the Act and the rules of the agency, the agency will issue a specific license authorizing the proposed activity in such form and containing the conditions and limitations as the agency deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance, or thereafter by amendment, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section as the agency deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety and the environment;

(B) require reports and the keeping of records, and to provide for inspections of activities in accordance with the license as may be appropriate or necessary; and

(C) prevent loss or theft of radioactive material subject to this chapter.

(3) The agency may request, and the licensee shall provide, additional information after the license has been issued to enable the agency to determine whether the license should be modified in accordance with subsection (dd) of this section.

(x) Specific terms and conditions of licenses.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act and to applicable rules, now or hereafter in effect, and orders of the agency.

(2) No license issued or granted in accordance with this section and no right to possess or utilize radioactive material granted by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and

to applicable rules, now or hereafter in effect, and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the radioactive material licensed to the locations and purposes authorized in the license.

(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company, if the parent company is involved in the bankruptcy.

(5) The notification in paragraph (4) of this subsection shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(6) A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.

(7) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license, the agency may consider the technical competence and compliance history of an applicant or holder of a license. After an opportunity for a hearing, the agency shall deny an application for a license, an amendment to a license, or renewal of a license if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the license.

(y) Expiration and termination of licenses, and administrative renewal; decommissioning of sites and separate buildings or outdoor areas.

(1) Effective September 1, 2004, the term of the specific license is two years. Except as provided in paragraph (3) of this subsection and subsection (z)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license. Except for subsection (z)(5) of this section, upon payment of the fee required by §289.204 of this title and if the agency does not deny the renewal in accordance with subsection (x)(7) of this section, the specific license will be administratively renewed. The requirements in this subsection are subject to the provisions of Government Code, §2001.054.

(2) If the fee is not paid and the license is not renewed in accordance with paragraph (1) of this subsection, the license expires, and the licensee is in violation of the rules and is subject to administrative penalties in accordance with §289.205 of this title.

(A) If the licensee pays the fee required by §289.204 of this title within 30 days after expiration of the license, the license will be reinstated and the licensee will not be required to file an application in accordance with subsection (d) of this section.

(B) If the licensee fails to pay the fee within 30 days after expiration of the license, the licensee shall file an application in accordance with subsection (d) of this section.

(3) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(4) All license provisions continue in effect beyond the expiration date, with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; and

(B) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements in §289.202(ddd) of this title.

(5) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (8) of this subsection, and begin decommissioning upon approval of that plan if:

(A) the license has expired or has been revoked in accordance with this subsection or subsection (dd) of this section;

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this title, at the entire site or in any separate building or outdoor area;

(C) no principal activities under the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with §289.202(eee) of this title.

(6) Coincident with the notification required by paragraph (5) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (gg) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (11)(E) of this subsection.

(7) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request shall be submitted no later than 30 days before notification in accordance with paragraph (5) of this subsection. The schedule for decommissioning set forth in paragraph (5) of this subsection may not commence until the agency has made a determination on the request.

(8) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(9) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (5) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(10) The procedures listed in paragraph (8) of this subsection may not be carried out prior to approval of the decommissioning plan.

(11) The proposed decommissioning plan for the site or separate building or outdoor area shall include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(12) The proposed decommissioning plan will be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(13) Except as provided in paragraph (15) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(14) Except as provided in paragraph (15) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(15) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the agency determines that the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24 month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24 month period;

(C) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(16) As the final step in decommissioning, the licensee shall do the following:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(17) The agency will provide written notification to specific licensees, including former licensees with provisions continued in effect beyond the expiration date in accordance with paragraph (4) of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title, or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title; and

(D) any outstanding fees in accordance with §289.204 of this title are paid and any outstanding notices of violations of this chapter or of license conditions are resolved.

(18) Each licensee shall submit to the agency all records required by §289.202(nn)(2) of this title before the license is terminated.

(z) Technical renewal of licenses.

(1) An application for a technical renewal of specific licenses shall be filed in accordance with subsection (d)(1)-(3) and (5)-(7) of this section. An application for a technical renewal of a specific license shall be filed by the date specified in the license. If the licensee fails to apply and pay the fee required by §289.204 of this title, the license expires and the licensee shall comply with the requirements of subsection (y) of this section. In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(2) In any case in which a licensee, prior to expiration of an existing license, has filed a request in proper form for a technical renewal or for a new license authorizing the same activities, such existing license shall not expire until the request has been finally determined by the agency. In any case in which a licensee, not more than 30 days after the expiration of an existing license, has filed an application for technical renewal or for a new license authorizing the same activities and paid the fee required by §289.204 of this title, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency.

(3) An application for technical renewal of a license will be approved if the agency determines that the requirements of subsection (e) of this section have been satisfied.

(4) When the date for administrative renewal in accordance with subsection (y)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the specific license will be renewed if the fee required by §289.204 of this title is paid, the technical renewal is approved by the agency in accordance with paragraph (3) of this subsection, and the agency does not deny the renewal in accordance with subsection (x)(7) of this section.

(5) When the date for the administrative renewal in accordance with subsection (y)(1) of this section and the date for the technical renewal in accordance with paragraph (1) of this subsection occur at the same time, the specific license renewal may be denied by the agency if any one of the following conditions apply:

(A) the fee required by §289.204 of this title is not paid;

(B) the agency denies the renewal in accordance with subsection (x)(7) of this section; or

(C) the agency does not approve the technical renewal in accordance with paragraph (3) of this subsection.

(6) Expiration of the specific license does not relieve the former licensee of the requirements of this chapter.

(7) The requirements in this subsection are subject to the provisions of Government Code, §2001.054.

(aa) Amendment of licenses at request of licensee.

(1) Requests for amendment of a license shall be filed in accordance with subsection (d)(1)-(3) of this section shall be signed by management or the RSO, and shall specify the respects in which the licensee desires a license to be amended and the grounds for the amendment.

(2) Requests for amendments to delete a subsite from a license shall be filed in accordance with subsections (d)(1) and (2) and (y)(3) and (15) of this section.

(bb) Agency action on requests to renew or amend. In considering a request by a licensee to renew or amend a license, the agency will apply the criteria in subsection (e) of this section as applicable.

(cc) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this chapter. This subsection does not include transfer for commercial distribution.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the agency (A licensee may transfer material to the agency only after receiving prior approval from the agency.);

(B) to the United States Department of Energy (DOE);

(C) to any person exempt from this section to the extent permitted in accordance with such exemption;

(D) to any person authorized to receive such material in accordance with the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the NRC, any agreement state, or any licensing state, or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, the agency, any agreement state, or any licensing state; or

(E) as otherwise authorized by the agency in writing.

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, an agreement state, or a licensing state, or to a general licensee who is required to register with the agency, the NRC, an agreement state, or a licensing state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

(A) The transferor may possess and have read a current copy of the transferee's specific license.

(B) When a current copy of the transferee's specific license described in subparagraph (A) of this paragraph is not readily available or when a transferor desires to verify that information received is correct or up-to-date, the transferor may obtain and record confirmation from the agency, the NRC, or the licensing agency of an agreement state or a licensing state that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of subsection (ff) of this section.

(dd) Modification, suspension, and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to revision or modification. A license may be modified, suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the license, or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(3) Each specific license revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no license shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from NRC, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is granted a general license to conduct the activities authorized in such licensing document within the State of Texas provided that:

(A) the licensing document does not limit the activity authorized by such document to specified installations or locations;

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the three-working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i) the exact location, start date, duration, and type of activity to be conducted;

(ii) the identification of the radioactive material to be used;

(iii) the name(s) and in-state address(es) of the individual(s) performing the activity;

(iv) a copy of the applicant's pertinent license;

(v) a copy of the licensee's operating, safety, and emergency procedures; and

(vi) a fee as specified in §289.204 of this title.

(C) the out-of-state licensee complies with all applicable rules of the agency and with all the terms and conditions of the licensee's licensing document, except any such terms and conditions that may be inconsistent with applicable rules of the agency;

(D) the out-of-state licensee supplies such other information as the agency may request; and

(E) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this subsection except by transfer to a person:

(i) specifically licensed by the agency, the NRC, another agreement state, or another licensing state to receive such material; or

(ii) exempt from the requirements for a license for such material in accordance with §289.251(e)(1) of this title.

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by NRC, an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service the device described in §289.251(f)(4)(H) of this title, within areas subject to the jurisdiction of the licensing body, is granted a general license to install, transfer, demonstrate, or service the device in the State of Texas provided that:

(A) the person files a report with the agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in the state of Texas. Each report shall identify by name and address, each general licensee to whom the device is transferred, the type of device transferred by manufacturer's name, model and serial number of the device, and serial number of the sealed source, and the quantity and type of radioactive material contained in the device;

(B) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the NRC, an agreement state, or a licensing state;

(C) the person assures that any labels required to be affixed to the device in accordance with requirements of the authority that licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(D) the holder of the specific license furnishes to each general licensee to whom the holder of the specific license transfers the device, or on whose premises the holder of the specific license installs the device, a copy of the general license contained in §289.251(f)(4)(H) of this title.

(3) The agency may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed in accordance with the licensing document, upon determining that the action is necessary in order to prevent undue hazard to occupational and public health and safety and the environment.

(ff) Preparation of radioactive material for transport. Requirements for the preparation of radioactive material for transport are specified in §289.257 of this title.

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material shall submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license for the following situations:

(A) when unsealed radioactive material requested or authorized on the license, with a half-life greater than 120 days, is in quantities exceeding 10^5 times the applicable quantities set forth in subsection (ii)(2) of this section; or

(B) when a combination of the unsealed radionuclides requested or authorized on the license, with a half-life greater than 120 days, results in the R of the radionuclides divided by 10^5 being

greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in subsection (ii)(2) of this section.

(2) The applicant for a specific license or renewal of a specific license or the holder of a specific license authorizing possession and use of radioactive material as specified in paragraph (3) of this subsection shall either:

(A) submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license; or

(B) submit financial assurance for decommissioning in the amount in accordance with paragraph (3) of this subsection using one of the methods described in paragraph (6) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license.

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) \$850,000 for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (ii)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1);

(B) \$170,000 for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in subsection (ii)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to 1); or

(C) \$85,000 for quantities of material greater than 10^{10} times the applicable quantities in subsection (ii)(2) of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than 1.)

(4) Each decommissioning funding plan shall contain a cost estimate for decommissioning in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license and a description of the method of assuring funds for decommissioning from paragraph (6) of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license. Upon approval of the decommissioning funding plan by the agency, the amount of financial assurance shall be adjusted and submitted in conformance with the agency approval.

(5) Financial assurance in conjunction with a decommissioning funding plan shall be submitted as follows:

(A) for an applicant for a specific license, financial assurance as described in paragraph (6) of this subsection, may be obtained after the application has been approved and the license issued by the agency, but shall be submitted to the agency prior to receipt of licensed material; or

(B) for an applicant for renewal of a specific license, or a holder of a specific license, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection shall be submitted with the decommissioning funding plan.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods. The financial instrument obtained shall be continuous for the term of the license in a form prescribed by the agency. The applicant or licensee shall obtain written approval of the financial instrument or any amendment to it from the agency.

(A) Prepayment. Prepayment is the deposit into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (ii)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (ii)(4) of this section. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in subsection (ii)(5) of this section. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in subsection (ii)(6) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions.

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable in the State of Texas to the Radiation and Perpetual Care Account.

(iii) The surety method or insurance shall remain in effect until the agency has terminated the license.

(C) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be in accordance with subparagraph (B) of this paragraph.

(D) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount in accordance with paragraph (4) of this subsection, and indicating that funds for decommissioning will be obtained when necessary.

(E) When a governmental entity is assuming custody and ownership of a site, there shall be an arrangement that is deemed acceptable by such governmental entity.

(7) Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas designated and formerly designated as restricted areas as defined in §289.201(b) of this title;

(ii) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented in accordance with §289.202(tt) of this title; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds.

(8) Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection.

(hh) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (ii)(7) of this section shall contain either:

(A) an evaluation showing that the maximum dose to a person offsite due to a release of radioactive material would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(B) an emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted in accordance with paragraph (1)(A) of this subsection:

(A) the radioactive material is physically separated so that only a portion could be involved in an accident;

(B) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(C) the release fraction in the respirable size range would be lower than the release fraction in subsection (ii)(7) of this section due to the chemical or physical form of the material;

(D) the solubility of the radioactive material would reduce the dose received;

(E) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (ii)(7) of this section;

(F) operating restrictions or procedures would prevent a release fraction as large as that in subsection (ii)(7) of this section; or

(G) other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted in accordance with paragraph (1)(B) of this subsection shall include the following information.

(A) Facility description. A brief description of the licensee's facility and area near the site.

(B) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(C) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(D) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(E) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(F) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(G) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan.

(H) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements in accordance with the Emergency Planning and Community Right-to-Know-Act of

1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(I) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the agency.

(J) Training. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(K) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(L) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations at intervals not to exceed three months and biennial onsite exercises to test response to simulated emergencies. Communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(M) Hazardous chemicals. A certification that the applicant has met its responsibilities in accordance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(ii) Appendices.

(1) Subjects to be included in training courses:

(A) fundamentals of radiation safety:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity of radioactivity (curie);

(iii) significance of radiation dose;

(I) radiation protection standards; and

(II) biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose;

(I) time;

(II) distance; and

(III) shielding;

(vi) radiation safety practices, including prevention of contamination and methods of decontamination; and

(vii) discussion of internal exposure pathways;

(B) radiation detection instrumentation to be used:

(i) radiation survey instruments:

(I) operation;

(II) calibration; and

(III) limitations;

(ii) survey techniques;

(iii) individual monitoring devices;

(C) equipment to be used:

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage, control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment;

(D) the requirements of pertinent federal and state regulations;

(E) the licensee's written operating, safety, and emergency procedures; and

(F) the licensee's record keeping procedures.

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252(ii)(2)

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This paragraph establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(B) Financial test.

(i) To pass the financial test, the parent company shall meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company shall have:

(-a-) two of the following three ratios:

(-1-) a ratio of total liabilities to net worth less than 2.0;

(-2-) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(-3-) a ratio of current assets to current liabilities greater than 1.5;

(-b-) net working capital and tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used.)

(II) The parent company shall have:

(-a-) a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(-b-) tangible net worth each at least six times the current decommissioning cost estimate for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if certification is used).

(ii) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(iii) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iv) If the parent company no longer meets the requirements of clause (i) of this subparagraph, the licensee shall send notice to the agency of intent to establish alternate financial assurance as specified in the agency's regulations. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Parent company guarantee. The terms of a parent company guarantee that an applicant or licensee obtains shall provide that:

(i) the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the agency, as evidenced by the return receipts;

(ii) if the licensee fails to provide alternate financial assurance as specified in the agency's rules within 90 days after receipt by the licensee and the agency of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee;

(iii) the parent company guarantee and financial test provisions shall remain in effect until the agency has terminated the license; and

(iv) if a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(4) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test of subparagraph (B) of this paragraph. Subparagraph (B) of this paragraph establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self guarantee.

(B) Financial test.

(i) To pass the financial test, a company shall meet all of the following criteria:

(I) tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self guaranteeing licensee and as parent-guarantor);

(II) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor); and

(III) a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's.

(ii) To pass the financial test, a company shall meet all of the following additional criteria:

(I) the company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(II) the company's independent certified public accountant shall have compared the data used by the company in the financial test that is derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(III) after the initial financial test, the company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iii) If the licensee no longer meets the criteria of clause (i) of this subparagraph, the licensee shall send immediate notice to the agency of its intent to establish alternate financial assurance as specified in the agency's rules within 120 days of such notice.

(C) Company self guarantee. The terms of a self guarantee that an applicant or licensee furnishes shall provide that:

(i) the company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the agency. Cancellation may not occur, however, during the 120 days

beginning on the date of receipt of the notice of cancellation by the agency, as evidenced by the return receipt;

(ii) the licensee shall provide alternate financial assurance as specified in the agency's rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee;

(iii) the guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee;

(iv) the licensee will promptly forward to the agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission in accordance with the requirements of the Securities and Exchange Act of 1934, §13;

(v) if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the criteria of subparagraph (B)(i) of this paragraph; and

(vi) the applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(5) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test a company shall meet the following criteria:

(I) tangible net worth greater than $10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(II) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(III) a ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

(ii) In addition, to pass the financial test, a company shall meet all of the following requirements:

(I) the company's independent certified public accountant shall have compared the data used by the company in the financial test, that is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test;

(II) after the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(III) if the licensee no longer meets the requirements of subparagraph (B)(i) of this paragraph, the licensee shall send notice to the agency of intent to establish alternative financial assurance as specified in the agency's rules. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternative financial assurance within 120 days after the end of such fiscal year.

(C) Company self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following.

(i) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

(ii) The licensee shall provide alternative financial assurance as specified in the agency rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

(iv) The applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(6) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test, a college or university shall meet the criteria of subclause (I) or (II) of this clause. The college or university shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's .

(II) for applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(ii) To pass the financial test, a hospital shall meet the criteria in subclause (I) or (II) of this clause. The hospital shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors or Aaa, Aa, or A as issued by Moodys;

(II) for applicants or licensees that do not issue bonds, all the following tests shall be met:

(-a-) (total revenues less total expenditures) divided by total revenues shall be equal to or greater than 0.04;

(-b-) long term debt divided by net fixed assets shall be less than or equal to 0.67;

(-c-) (current assets and depreciation fund) divided by current liabilities shall be greater than or equal to 2.55; and

(-d-) operating revenues shall be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

(iii) In addition, to pass the financial test, a licensee shall meet all the following requirements:

(I) the licensee's independent certified public accountant shall have compared the data used by the licensee in the financial test that is required to be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test;

(II) after the initial financial test, the licensee shall repeat passage of the test within 90 days after the close of each succeeding fiscal year;

(III) if the licensee no longer meets the requirements of subparagraph (A) of this paragraph, the licensee shall send notice to the agency of its intent to establish alternative financial assurance as specified in the agency's rules. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following:

(i) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the agency. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

(ii) The licensee shall provide alternative financial assurance as specified in the agency's regulations within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

(iv) The applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer or officer of the institution) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of the fact to the agency within 20 days after publication of the change by the rating service.

(7) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release. The following table contains quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Figure: 25 TAC §289.252(ii)(7) (No change.)

(8) Requirements for demonstrating financial qualifications.

(A) If an applicant or licensee is not required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall demonstrate financial qualification by submitting attestation that the applicant or licensee is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license.

(B) If an applicant or licensee is required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratios in clause (ii) of this subparagraph) that was used to obtain the financial assurance instrument used to meet the financial assurance requirement specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance specified in subsection (gg) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) SEC documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly-held company; or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as

described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(ii) declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) If the applicant or licensee is a state or local government entity, a statement of such will suffice as demonstration that the government entity is financially qualified to conduct the requested or licensed activities.

(D) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph.

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 July 12, 2004.

TRD-200404479
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: September 1, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 458-7236

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER L. MOTOR FUEL TAX--PRIOR TO JANUARY 1, 2004

34 TAC §3.171

The Comptroller of Public Accounts adopts an amendment to §3.171, concerning records required; information required, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5281).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.004, 153.018, 153.117, 153.219, and 153.309.

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 July 7, 2004.

TRD-200404429
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.172

The Comptroller of Public Accounts adopts an amendment to §3.172, concerning transit company affidavit, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5283).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.102(b) and §153.202(b).

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 July 7, 2004.

TRD-200404430

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.173

The Comptroller of Public Accounts adopts an amendment to §3.173, concerning refunds on gasoline and diesel fuel tax, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5283).

The amendment incorporates legislative changes in House Bill 2425, 78th Legislature, 2003, which amended Tax Code, Chapter 153. The adopted amendment adds subsections (e)(8)(E) and (e)(9)(H) to provide that air conditioning and heating systems of a motor vehicle is not a power take-off system. The adopted amendment also adds subsection (e)(15) to provide guidelines for a motor fuel tax exemption on the volume of water, fuel ethanol, or biodiesel blended with taxable petroleum diesel fuel as described under Tax Code, §153.203.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.119(d), 153.222(d), 153.203(a)(11), and 153.203(b)

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 July 7, 2004.

TRD-200404431
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.174

The Comptroller of Public Accounts adopts an amendment to §3.174, concerning incidental highway travel by bonded users, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5287).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.209, 153.219, 153.221, and 153.222.

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 July 7, 2004.

TRD-200404432
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.175

The Comptroller of Public Accounts adopts an amendment to §3.175, concerning liquefied gas tax decal, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5288).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.302, 153.3021, 153.303, 153.305, and 153.307

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 July 7, 2004.

TRD-200404433

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.176

The Comptroller of Public Accounts adopts an amendment to §3.176, concerning metering devices used to claim refund of tax on fuel used in power take-off and auxiliary power units, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5289).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.119 and §153.222.

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 July 7, 2004.

TRD-200404434
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.177

The Comptroller of Public Accounts adopts an amendment to §3.177, concerning separate liquefied gas tax permits required, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5290).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.304, 153.306, 153.308, and 153.309.

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 July 7, 2004.

TRD-200404435
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.178

The Comptroller of Public Accounts adopts an amendment to §3.178, concerning trip permit in lieu of interstate trucker permit, with changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5290). Subsection (e)(2) is corrected to clarify that the trip permit payment is made to the Texas comptrollers' office.

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.109, and §153.212.

§3.178. Trip Permit in Lieu of Interstate Trucker Permit.

(a) This rule applies only to motor fuel transactions that take place prior to January 1, 2004. Motor fuel transactions that occur on or after January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter S.

(b) Who may qualify. A person entering Texas for commercial purposes with a motor vehicle that by weight or number of axles qualifies that person as an interstate trucker must purchase a temporary

trip permit in lieu of the required interstate trucker permit if no more than five entries into the state are made during a calendar year.

(c) Qualified motor vehicles. A motor vehicle qualifies if it is operated for commercial purposes and:

(1) has two axles and a registered gross weight in excess of 26,000 pounds; or

(2) has three or more axles, regardless of weight; or

(3) is used in combination and the registered gross weight of the combination exceeds 26,000 pounds.

(d) Conditions.

(1) A trip permit must be obtained before entering into Texas.

(2) The trip permit is valid for 20 days from date of purchase.

(3) The trip permit is acceptable for one entry into the state.

(e) Procedures.

(1) A remittance for the trip permit shall be made to the Texas comptroller in the amount of $50.

(2) The remittance may be in the form of a cashier's check or a money order delivered by mail or wire service to the Texas comptroller's office, Austin.

(3) The receipt from the cashier's check or money order shall be marked "trip permit" and carried in the vehicle for which the tax payment is made.

(f) Limitations. Persons who make more than five entries must obtain an interstate trucker permit.

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 July 7, 2004.

TRD-200404436
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.180

The Comptroller of Public Accounts adopts an amendment to §3.180, concerning signed statements for purchasing diesel fuel tax free, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5291).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.205

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 July 7, 2004.

TRD-200404437
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.182

The Comptroller of Public Accounts adopts an amendment to §3.182, concerning motor fuel transporting documents, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5292).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.004, 153.103, and 153.204.

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 July 7, 2004.

TRD-200404438
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.183

The Comptroller of Public Accounts adopts an amendment to §3.183, concerning on-highway travel of farm machinery, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5294).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.119 and §153.222.

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 July 7, 2004.

TRD-200404439
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.185

The Comptroller of Public Accounts adopts an amendment to §3.185, concerning diesel tax prepaid user permit, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5295).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.210.

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 July 7, 2004.

TRD-200404440
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.187

The Comptroller of Public Accounts adopts an amendment to §3.187, concerning documentation and reporting of imports and exports, import verification numbers, export sales by distributors and suppliers, and diversion numbers, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5296).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.018.

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 July 7, 2004.

TRD-200404441
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.189

The Comptroller of Public Accounts adopts an amendment to §3.189, concerning proof of resale, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5297).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.103, 153.105(c), 153.204, and 153.206(f).

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 July 7, 2004.

TRD-200404442
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.190

The Comptroller of Public Accounts adopts an amendment to §3.190, concerning temperature adjustment conversion table, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5298).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.103 and §153.204.

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 July 7, 2004.

TRD-200404443
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.193

The Comptroller of Public Accounts adopts an amendment to §3.193, concerning bad debt deductions, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5299).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.1195, 153.2225, and 153.409.

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 July 7, 2004.

TRD-200404444
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.196

The Comptroller of Public Accounts adopts an amendment to §3.196, concerning reports, due dates, bonding requirements, and qualifications for annual filers, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5300).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new

motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.118, 153.218, 153.221, and 153.310.

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 July 7, 2004.

TRD-200404445
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.200

The Comptroller of Public Accounts adopts an amendment to §3.200, concerning transportation services for public school districts, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5301).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§153.104, 153.203, and 153.3021.

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 July 7, 2004.

TRD-200404446
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.202

The Comptroller of Public Accounts adopts an amendment to §3.202, concerning common and contract carrier registration, reports, due dates, and administrative remedies, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5302).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.003.

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 July 7, 2004.

TRD-200404447
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 27, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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34 TAC §3.203

The Comptroller of Public Accounts adopts an amendment to §3.203, concerning diesel fuel tax exemption for water, fuel ethanol, and biodiesel mixtures, without changes to the proposed text as published in the May 28, 2004, issue of the *Texas Register* (29 TexReg 5303).

The amendment incorporates legislative changes in House Bill 2458, 78th Legislature, 2003, to provide for the repeal of Tax Code, Chapter 153, and to add Tax Code, Chapter 162, to replace the repealed chapter.

Subsection (a) is amended to clarify the date through which the current rule is applicable and to provide reference to the new

motor fuel subchapter of the Texas Administrative Code that became effective January 1, 2004. Other subsections are renumbered as applicable.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §153.203(a)(11) and §153.203(b).

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 July 8, 2004.

TRD-200404462
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: July 28, 2004
Proposal publication date: May 28, 2004
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.79

The Texas Youth Commission (TYC) adopts the repeal of §81.79, concerning Historically Underutilized Business Participation, without changes to the proposal as published in the May 21, 2004, issue of the *Texas Register* (29 TexReg 5033).

The justification for the repeal is to provide more direct access to all agency rules relating to the purchase of goods and services. The repeal of the section allows the commission to publish one chapter containing all rules relating to contracts. Notice of adoption of new Chapter 111 is published in this issue of the *Texas Register*. The content of the repealed rule can now be found under §111.81.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to establish rules appropriate to the proper accomplishment of its functions.

The adopted repeal implements the Human Resources Code, §61.034.

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 July 7, 2004.

TRD-200404451
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: July 27, 2004
Proposal publication date: May 21, 2004
For further information, please call: (512) 424-6301

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CHAPTER 83. PURCHASING YOUTH SERVICES

37 TAC §§83.1, 83.3, 83.21, 83.23, 83.25, 83.27, 83.35, 83.37, 83.39, 83.47, 83.49

The Texas Youth Commission (TYC) adopts the repeal of §§83.1, 83.3, 83.21, 83.23, 83.25, 83.27, 83.35, 83.37, 83.39, 83.47, and 83.49 without changes to the proposal as published in the May 21, 2004, issue of the *Texas Register* (29 TexReg 5034).

The justification for the repeal is to provide for more direct access to the commission's rules relating to contracts. The repeal of the sections will allow the commission to publish one chapter containing all rules relating to contracts. Notice of adoption of new Chapter 111 is published in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to develop rules appropriate to the proper accomplishment of its functions.

The adopted repeal implements the Human Resources Code, §61.034.

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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Dwight Harris
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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CHAPTER 87. TREATMENT
SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.5

The Texas Youth Commission (TYC) adopts an amendment to §87.5, concerning Family Involvement, with changes to the proposed text as published in the June 4, 2004, issue of the *Texas Register* (29 TexReg 5556). Changes to the section consist of inserting "Purpose." at the beginning of subsection (a) which was unintentionally omitted in the proposal.

The justification for amending the section is compliance with federal law, maintenance of facility safety and security, as well as

clear direction relating to information that must be provided to parents of TYC youth.

The amendment makes a clarification regarding what constitutes private, in-person communication between a youth in the custody of TYC and his/her parent during visitation, and establishes an expectation of 24-hour advance notice from a parent who requests such communication. The amended rule also provides for greater detail regarding information provided to parents of TYC youth. Pursuant to federal law 20 USCA 1221e-3, any notices required under the Individuals with Disabilities Education Act must be provided, without regard to youth consent, to the parents of TYC youth who are 18 years of age or older and placed in a residential facility of less than high restriction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §67.0761, which provides the Texas Youth Commission with the authority to develop programs that encourage family involvement in the rehabilitation of a child.

The adopted amendment implements the Human Resources Code, §61.034.

§87.5. Family Involvement.

(a) Purpose. The purpose of this rule is to establish the amount and type of involvement Texas Youth Commission (TYC) encourages and seeks with the family of youth in jurisdiction.

(b) Parent Notifications.

(1) Parents of youth younger than 18 shall be provided the following information without regard to the youth's consent:

(A) written notification of youth placement;

(B) the name of the youth's primary service worker (PSW);

(C) instructions for contacting the youth's PSW;

(D) rights and rules regarding visitation, mail, and telephone;

(E) rules regarding personal property;

(F) rules regarding parents sending money to youth; and

(G) copies of the Individual Case Plan (ICP).

(2) Youth 18 and older must give written consent for information to be disclosed to a parent, with the following exceptions:

(A) educational information may be shared with a parent whose child is a "dependent student" as defined in section 152 of the Internal Revenue Code of 1986, pursuant to federal law 20 USCA 1232g; and

(B) any notices required under Individuals with Disabilities Education Act (IDEA), Part B, including Admission, Review, and Dismissal (ARD) committee meetings and scheduled evaluations, if the youth is in a residential placement other than high restriction pursuant to federal law 20 USCA 1221e-3 will be provided to the parent.

(3) Written information sent to parents who may be non-English speaking shall be either translated to Spanish or accompanied by a letter stating that TYC will translate the information into the spoken language at the request of the parent.

(c) Communication.

(1) In the course of the communication described below, the youth's PSW shall not disclose any information for which a youth 18 or older has withheld consent.

(2) Youth's PSW shall:

(A) seek input from family for youth's ICP;

(B) encourage families to communicate concerns to facility administrators and/or PSW;

(C) encourage families to visit their child in any program and prepare for the youth's return home;

(D) whenever possible, counsel a youth's parents in preparation for the youth's return home;

(E) encourage youth to communicate with families by letter and/or telephone; and

(F) refer families to other agencies that provide services needed by the families.

(d) Visitation.

(1) Youth are allowed to have visitation subject to the safe and secure operations of the program. See §93.1 of this title (relating to Basic Youth Rights).

(2) Youth have a right to refuse visitation.

(3) Parents' Visitation.

(A) Parents shall have the right to private, in-person communication with their child for reasonable periods of time. The time, place, and conditions of the private, in-person communication may only be regulated to prevent disruption of scheduled activities and to maintain the safety and security of the facility.

(B) Private, in-person communication means a communication between a parent and his/her child in a location where conversation cannot be overheard by staff.

(C) Parents wishing to have private, in-person communication with their child are expected to make the request at least 24 hours before the visitation. Requests not made within 24 hours should be accommodated if facility capacity allows.

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 July 7, 2004.

TRD-200404452
Dwight Harris
Executive Director
Texas Youth Commission
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Proposal publication date: June 4, 2004
For further information, please call: (512) 424-6301

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37 TAC §87.15

The Texas Youth Commission (TYC) adopts an amendment to §87.15, concerning Title IV-E Foster Care Youth, without changes to the proposed text as published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4737).

The justification for amending the section is availability of accurate and current policy. The amendment to the section reflects

the new agency name of the Texas Department of Family and Protective Services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to establish rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

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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Dwight Harris
Executive Director
Texas Youth Commission
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Proposal publication date: May 14, 2004
For further information, please call: (512) 424-6301

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CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

37 TAC §95.55

The Texas Youth Commission (TYC) adopts amendments to §95.55, concerning Level II Hearing Procedure, with changes to the proposed text as published in the May 21, 2004, issue of the *Texas Register* (29 TexReg 5034). Changes to the proposed text consist of minor grammatical clarifications and corrections.

The justification for amending the section is to provide for a youth's right to due process when charged with rule violations while in the custody of TYC. The amendment allows youth the opportunity to choose an advocate. The youth's choice shall be honored unless there is a showing of unavailability for any reason. If the youth makes no choice, or the first choice is unavailable for any reason, the hearing manager shall appoint the advocate. If the youth is excluded from the hearing for behavioral reasons, the advocate shall be present during the testimony and shall have the opportunity to question witnesses. Witnesses may testify by telephone or videoconference if in-person testimony is impractical or unfeasible. If testimony is provided by phone, persons required to be present at the hearing must be able to simultaneously hear the testimony. Youth will be given the hearing packet at least 24 hours in advance of the hearing. Other amendments to this rule are clarifications to accurately reflect current agency practice.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to best serve the youth's welfare and the protection of the public.

The adopted amendments implement the Human Resources Code, §61.034.

§95.55. Level II Hearing Procedure.

(a) Purpose. The purpose of this rule is to establish a procedure to be followed when the second highest level of due process is afforded a youth. The Level II hearing procedure is appropriate due process in the following instances:

(1) disciplinary transfer;

(2) disciplinary extension in length of stay;

(3) demotion of one or more phases in the behavior area;

(4) admission to a behavior management program (BMP);

(5) admission to the aggression management program (AMP);

(6) with a few exceptions in procedure:

(A) admission to the Corsicana Stabilization Unit, Corsicana Residential Treatment Center; and

(B) extension of time to treat a psychiatric disorder in connection with a Corsicana Stabilization Unit placement at the Corsicana Residential Treatment Center (as appropriate).

(b) Applicability.

(1) For the highest level of due process, see §95.51 of this title (relating to Level I Hearing Procedure).

(2) See §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence).

(3) See §95.17 of this title (relating to Behavior Management Program).

(4) See §95.21 of this title (relating to Aggression Management Program).

(5) See §87.67 of this title (relating to Corsicana Stabilization Unit).

(6) For exceptions in procedures used for admission to Corsicana Stabilization Unit, Corsicana Residential Treatment Center, and extension of time to treat the psychiatric disorder, see §95.71 of this title (relating to Mental Health Status Review Hearing Procedure).

(c) Explanation of Terms Used. Preponderance of the evidence--a standard of proof meaning the greater weight and degree of credible evidence admitted at the hearing, e.g., whether the credible evidence makes it more likely than not that a particular proposition is true.

(d) Procedure.

(1) The designated primary service worker (PSW) or the administrative duty officer (ADO) shall request permission to schedule a hearing from the appropriate supervisor, institutional superintendent, halfway house superintendent, parole supervisor, or quality assurance administrator. The hearing must be scheduled as soon as practical but not later than seven (7) days, excluding weekends and holidays, after the alleged violation. A delay of more than seven (7) days in scheduling the hearing must be justified by documentation of circumstances which made it impossible, impractical, or inappropriate to schedule the hearing.

(2) Failure to document circumstances making it impossible, impractical, or inappropriate to schedule the hearing may result in a dismissal or reversal of the decision of the hearing manager.

(3) If the youth is admitted to Institution Detention Program (IDP) pending a Level II hearing, the hearing shall be conducted within ten (10) days from date of admission to detention. A delay of more than ten (10) days in conducting the hearing must be justified by documentation of circumstances which made it impossible, impractical, or inappropriate to conduct the hearing earlier.

(4) The appropriate supervisor, institutional superintendent, halfway house superintendent, parole supervisor, or quality assurance administrator will appoint an impartial staff member to act as hearing manager.

(5) The hearing manager shall be a Texas Youth Commission (TYC) staff member who is trained to function as a hearing manager.

(A) If the youth is currently assigned to an institution, the hearing manager shall be someone not directly responsible for supervising the youth.

(B) If the youth is currently assigned to a halfway house, the hearing manager shall not be a member of the halfway house staff.

(C) If the youth is currently assigned to a contract program, the hearing manager shall not be the TYC quality assurance specialist assigned to that youth.

(D) If the youth is currently assigned to his/her home, the hearing manager shall not be the parole officer assigned to the youth's case or the quality assurance specialist who works directly with the youth's supervising officer.

(6) The youth's PSW shall be responsible for assembling all evidence and giving all notices required for the hearing.

(7) The youth shall be given written notice of his/her rights not less than 24 hours prior to the hearing. The youth's rights are:

(A) the right to remain silent;

(B) the right to be assisted by an advocate at the hearing;

(C) the right to confront and cross-examine adverse witnesses who testify at the hearing;

(D) the right to contest adverse evidence admitted at the hearing;

(E) the right to call readily available witnesses and present readily available evidence on his own behalf at the hearing; and

(F) the right to appeal the results of the hearing. The youth's right to appeal cannot be waived.

(8) The youth and the youth's advocate shall be given written notice of the reasons for calling the hearing, the proposed action to be taken, and the evidence to be relied upon not less than 24 hours prior to the hearing. After receipt of the written notice and consultation with the advocate, the youth may waive the 24-hour notice period by agreeing, in writing, to an earlier hearing time.

(9) All youth in TYC facilities and secure contract placements shall be given the hearing packet (all written materials relied upon and a list of witnesses) at least 24 hours in advance of the hearing. The paperwork may be taken away from youth in institutional detention program if the youth is misusing the papers in any way.

(10) Reasonable efforts shall be made to inform the youth's parent(s) of the time and place of the hearing not less than 24 hours prior to the hearing.

(11) The hearing shall consist of two parts: fact-finding and disposition, and shall be held where the youth resides unless the hearing manager determines that some other site is more appropriate. During the fact-finding portion of the hearing, only evidence concerning the alleged misconduct may be considered; the youth's prior behavior shall not be considered unless disposition is reached.

(12) The youth shall be assisted by an informed and responsible advocate. The youth shall be given the opportunity to choose an advocate. The youth's choice shall be honored unless there is a showing of unavailability for any reason. If the youth makes no choice, or the first choice is unavailable for any reason, the hearing manager shall appoint the advocate. In cases where the youth is not proficient in the English language, the appointed advocate shall be proficient in English as well as the primary language of the youth or an interpreter shall be used.

(13) The hearing shall be tape-recorded and the recording shall be the official record of the hearing. The tape-recording and the hearing packet shall be preserved for six (6) months following the hearing.

(14) The youth shall be present during the hearing unless the youth waives his/her presence or his/her behavior prevents the hearing from proceeding in an orderly and expeditious fashion.

(A) A waiver of the youth's presence shall be in writing and signed by the youth and his/her advocate. If the youth does not sign the waiver for any reason, his/her presence is not waived.

(B) If the youth waives his/her presence, the hearing may be conducted by teleconference.

(C) If a youth is excluded for behavioral reasons, or to secure the testimony of a witness, those reasons shall be documented in the hearing record. The advocate shall be present during the testimony and shall have the opportunity to question the witness.

(D) A true plea cannot be entered on behalf of a youth who has waived his/her presence at the hearing.

(15) A victim who appears as a witness should be provided a waiting area where he/she is not likely to come in contact with the youth except during the hearing.

(16) Witnesses shall take an oath prior to testifying. Witnesses may testify by telephone or videoconference if in-person testimony is impractical or unfeasible. If testimony is provided by phone, persons required to be present at the hearing must be able to simultaneously hear the testimony.

(17) The hearing manager, PSW, and advocate may question each witness in turn. The PSW and advocate may offer summation statements.

(18) To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearings manager; however, any person except the youth's advocate may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the exclusions are stated on the record.

(19) With the exception of the youth, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing his/her testimony with anyone until all the witnesses have been dismissed.

(20) The hearings manager may permit a witness to testify outside the presence of the youth if such appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the advocate for the youth shall be present during the testimony and shall have the opportunity to review the testimony with the youth before questioning the witness.

(21) The youth shall not be called as a witness unless, after consulting with the advocate, he/she waives his right to remain silent on the record. Neither the hearing manager nor the PSW may question the youth unless he/she waives the right to remain silent.

(A) The youth's failure to testify shall not create a presumption against him/her.

(B) A youth who waives the right to remain silent may only be questioned concerning those issues addressed by his/her testimony.

(22) All credible evidence may be considered, irrespective of its form.

(23) The standard of proof for all disputed issues is a preponderance of the evidence.

(24) The hearings manager may recess or continue the hearing for such period(s) of time as may be necessary to insure an informed and accurate fact-finding or to secure evidence the hearing manger determines may be relevant.

(25) The hearing manager will announce his/her findings of fact.

(26) If there is a finding of true, the hearing manager shall proceed to disposition and provide the youth an opportunity to present extenuating circumstances. If no extenuation is found, the hearing manager shall order the disposition recommended by the staff representative unless the hearing manager finds extenuating circumstances.

(A) A hearing manager's decision to assign a disciplinary minimum length of stay (with or without a transfer) is final subject to approval by the appropriate director of juvenile corrections or designee.

(B) A hearing manager's decision that a youth will be transferred, demoted one or more phases, and/or admitted to a disciplinary segregation program is final subject to an appeal by the youth.

(C) If extenuation circumstances are found incident to the violation(s) proved at a Level II hearing, the youth shall not be assigned a disciplinary length of stay. However, if more than one disposition option was requested (with appropriate and specific notice to the youth), such dispositions may be assessed if the hearing manager determines that such dispositions are appropriate despite the finding of extenuation.

(27) The hearing manager shall prepare the Hearing Manager's Report of a Level II Hearing form, CCF-170, of his/her findings, which includes grounds for the hearing, evidence relied upon, and the decision.

(28) The youth is informed of his/her right to appeal to the executive director at the close of the hearing. The pendency of an appeal shall not preclude implementation of the hearing manager's dispositional decision.

(29) A copy of the report (CCF-170) is given to the youth immediately following the close of the hearing.

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 July 7, 2004.

TRD-200404454
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: July 27, 2004
Proposal publication date: May 21, 2004
For further information, please call: (512) 424-6301

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CHAPTER 99. GENERAL PROVISIONS
SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.67

The Texas Youth Commission (TYC) adopts an amendment to §99.67, concerning Court Ordered Child Support, with changes to the proposed text as published in the May 14, 2004, issue of the *Texas Register* (29 TexReg 4737). Changes to the proposed text consist of a minor correction to a reference to one of TYC's internal procedural manuals.

The justification for amending the section is the availability of accurate and current policy. The amendment reflects the new agency name of the Texas Department of Family and Protective Services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

§99.67. Court Ordered Child Support.

(a) Purpose. The purpose of this rule is to establish a system whereby the Texas Youth Commission (TYC) complies with the Texas Family Code, §54.06, which specifies that the agency receives court ordered child support payments for youth committed to the agency's care and deposits these payments in the General Revenue Fund.

(b) Upon entry into TYC, a youth's parents are informed where to send child support if they have been court ordered to do so.

(c) As part of the intake process, the Marlin Orientation and Assessment Unit (MOAU) reviews commitment documentation for language ordering child support payments. When this documentation exists, MOAU ensures that an entry is made to the correctional care information system detailing the payment amount and terms of rendition.

(d) The finance department maintains documentation of court ordered child support payments and associated correspondence.

(e) The finance department notifies the family by letter to:

(1) begin payments and provides the address to which payments are to be sent;

(2) render missed payments; and

(3) end payments when the youth is discharged or paroled to home.

(f) The committing court is notified by TYC when one payment is past due. For procedures, refer to TYC's Accounting Procedure Manual (ACC) 17.05 (relating to Court Ordered Child Support Payments).

(g) The account is referred to the Child Support Division of the Office of the Attorney General when the account is 90 days delinquent. For procedures, refer to ACC 17.05.

(h) If payments are received for youth certified Title IV-E, those payments are immediately forwarded to the Texas Department of Family and Protective Services.

(i) The Office of the Attorney General is notified of Title IV-E certification of the youth, new family contact information, discharge, or return to home.

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 July 7, 2004.

TRD-200404455
Dwight Harris
Executive Director
Texas Youth Commission
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CHAPTER 111. CONTRACTING FOR SERVICES OTHER THAN YOUTH SERVICES

37 TAC §§111.1, 111.7, 111.9, 111.11, 111.13, 111.15, 111.17, 111.21, 111.25, 111.35, 111.45

The Texas Youth Commission (TYC) adopts the repeal of §§111.1, 111.7, 111.9, 111.11, 111.13, 111.15, 111.17, 111.21, 111.25, 111.35, and 111.45, regarding contracting for services other than youth services, without changes to the proposal as published in the May 21, 2004, issue of the *Texas Register* (29 TexReg 5036).

The justification for the repeal is to provide for more direct access to the commission's rules relating to contracts. The repeal of the sections will allow the commission to publish one chapter containing all rules relating to contracts. Notice of adoption of new Chapter 111 is published in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to develop rules appropriate to the proper accomplishment of its functions.

The adopted repeal implements the Human Resources Code, §61.034.

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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Dwight Harris
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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CHAPTER 111. CONTRACTS

The Texas Youth Commission (TYC) adopts new §§111.1, 111.7, 111.9, 111.11, 111.13, 111.15, 111.17, 111.31, 111.37, 111.39, 111.45, 111.49, 111.51, 111.57, 111.61, 111.73, 111.77, 111.81, and 111.87 without changes to the proposed text as published in the May 21, 2004 issue of the *Texas Register* (29 TexReg 5037).

The justification for the new sections is to better organize the commission's rules relating to contracts. The new sections consolidate all contract rules into one chapter, whereas previously, rules relating to contracts for youth services, contracts for other than youth services, and historically underutilized businesses had been in separate chapters. The new Chapter 111 replaces rules from Chapters 81, 83 and 111.

No comments were received regarding adoption of the new sections.

SUBCHAPTER A. CONTRACTS FOR YOUTH SERVICES

37 TAC §§111.1, 111.7, 111.9, 111.11, 111.13, 111.15, 111.17

The new sections are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to develop rules appropriate to the proper accomplishment of its functions and §61.037, which requires the commission to make reasonable efforts to ensure that the expenditure of appropriations for the purchase of contract residential care for youth be allocated to providers on a fixed monthly basis if it is cost-effective and the number, type, needs, and conditions of the youth to be served are reasonably constant.

The adopted sections implement the Human Resources Code, §61.034.

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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TRD-200404457
Dwight Harris
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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SUBCHAPTER B. CONTRACTS FOR OTHER THAN YOUTH SERVICES

37 TAC §§111.31, 111.37, 111.39, 111.45, 111.49, 111.51, 111.57, 111.61

The new sections are adopted under the Human Resources Code, §61.034 and §61.037, which provides the Texas Youth Commission with the authority to develop rules appropriate to the proper accomplishment of its functions. The commission also has the authority to make reasonable efforts to ensure that the expenditure of appropriations for the purchase of contract residential care for youth be allocated to providers on a fixed monthly basis if it is cost-effective and the number, type, needs, and conditions of the youth to be served are reasonably constant.

The adopted sections affect the Human Resources Code, §61.034.

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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Dwight Harris
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §§111.73, 111.77, 111.81, 111.87

The new sections are adopted under the Human Resources Code, §61.034 and §61.037, which provides the Texas Youth Commission with the authority to develop rules appropriate to the proper accomplishment of its functions. The commission also has the authority to make reasonable efforts to ensure that the expenditure of appropriations for the purchase of contract residential care for youth be allocated to providers on a fixed monthly basis if it is cost-effective and the number, type, needs, and conditions of the youth to be served are reasonably constant.

The adopted sections affect the Human Resources Code, §61.034.

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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Dwight Harris
Executive Director
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For further information, please call: (512) 424-6301

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER B. MAXIMUM SYSTEM CAPACITY OF THE CORRECTIONAL INSTITUTIONS DIVISION

37 TAC §152.15

The Texas Board of Criminal Justice adopts new rule §152.15, April 2004 Additions to Capacity, without change to the text as proposed in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3782). The purpose of the new rule is to memorialize proposed additions to capacity at the below-listed TDCJ units, in accordance with the "House Bill 124" process embodied in Texas Government Code §§499.102 et seq., originally enacted at Acts 1991, 72nd Leg., ch. 655: Gurney, Holliday and Travis units (each with an addition of 128 beds), and the Ware unit (with an addition of 16 beds) for a total addition of 400 new beds.

There were no comments received pursuant to the publication of the proposal in the *Texas Register*. Pursuant to posting of the proposal on the affected units under section Government Code §499.103, two offender comments were received regarding the expansion of the Holliday Unit, and two were received regarding expansion of the Ware Unit. One offender letter suggested that more inmates be paroled in order to alleviate capacity requirements, a suggestion that is beyond the jurisdiction of the agency. The other three offender comments raised the concern that there would not be a seat in the dayroom for every offender in the housing area. The agency's response is that there is no requirement that dayroom furnishings accommodate every offender in the housing area at one time, and the proposed expansion does not exceed square footage requirements for housing and dayroom space. One offender (Ware Unit) additionally suggested that time allotted for meals was already inadequate and would be further diminished by the expansion; his concerns were forwarded to the unit administration to ensure that the required time for meals is followed.

The amendment is adopted under Texas Government Code, §492.010, and §§499.102 et seq.

Cross Reference to Statutes: Texas Government Code, §§499.102 et seq.

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 July 7, 2004.

TRD-200404406
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: July 27, 2004
Proposal publication date: April 16, 2004
For further information, please call: (512) 463-0422

♦ ♦ ♦

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

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 and 2003 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0704-10-I) was filed on July 12, 2004.

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 and 2003 model vehicles.

A copy of the petition, including a 236-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-0704-10-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on August 11, 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-200404512
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 13, 2004

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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.

Agency Rule Review Plan

Texas Public Finance Authority

Title 34, Part 10

TRD-200404428
Filed: July 7, 2004

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Proposed Rule Reviews

Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

Chapter 51: Executive

Subchapter A: Procedures for Adoption of Rules

Subchapter B: Authority to Contract

§51.60. Authority to Contract.

Subchapter C: Easement Requests and Unauthorized Easement Activity

§51.92. Easement Requests.

Subchapter D: Department Litigation

§51.131. Litigation and Other Legal Action.

Subchapter E: Sick Leave Pool

§51.141. Sick Leave Pool.

Subchapter F: Vehicles

§51.151. Use of Uninscribed Vehicles.

§51.152. Assignment and Use of Agency Vehicles.

Subchapter G: Nonprofit Organizations

§51.161. Definitions.

§51.162. Closely Related Nonprofit Organizations.

§51.163. Conflict of Interest, Performance of Services, and Use of Department Facilities.

§51.164. Gifts to the Department.

§51.165. Best Practices of the Official Nonprofit Partner (ONP).

§51.166. Sponsorship Requirements.

§51.167. Employee Fundraising Activities.

§51.168. Youth-appropriate Advertising.

Subchapter H. Memorandum of Understanding

§51.170. Memorandum of Understanding with Texas Economic Development Department and Texas Department of Transportation.

Subchapter I. Historically Underutilized Businesses

§51.171. Historically Underutilized Business Program.

Subchapter J. Contract Dispute Resolution

§51.200. Applicability.

§51.201. Definitions.

§51.202. Prerequisites to Suit.

§51.203. Sovereign Immunity.

§51.204. Notice of Claim of Breach of Contract.

§51.205. Agency Counterclaim.

§51.206. Request for Voluntary Disclosure of Additional Information.

§51.207. Duty to Negotiate.

§51.208. Timetable.

§51.209. Conduct of Negotiation.

§51.210. Settlement Approval Procedures.

§51.211. Settlement Agreement.

§51.212. Costs of Negotiation.

§51.213. Request for Contested Case Hearing.

§51.214. Mediation Timetable.

§51.215. Conduct of Mediation.

§51.216. Agreement to Mediate.

§51.217. Qualifications and Immunity of the Mediator.

§51.218. Confidentiality of Mediation and Final Settlement Agreement.

§51.219. Costs of Mediation.

§51.220. Settlement Approval Procedures.

§51.221. Initial Settlement Agreement.

§51.223. Referral to the State Office of Administrative Hearings.

§51.224. Assisted Negotiation Processes.

§51.225. Alternative Dispute Resolution.

This review is pursuant to the Texas Government Code, §2001.039.

The Commission will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reasons for adopting the sections under review continue to exist and to determine whether the rule reflects current legal, policy, and procedural considerations. Final consideration of this rules review is scheduled for the Parks and Wildlife Commission on August 26, 2004.

Any questions or written comments pertaining to this notice of intention to review should be directed to Gene McCarty, Chief of Staff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX, 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200404499
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: July 12, 2004

♦ ♦ ♦

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

Chapter 58. OYSTERS AND SHRIMP

Subchapter B. Statewide Shrimp Fishery Proclamation

§58.101. Application.

§58.102. Definitions.

§58.103. Shrimp Management Plan.

§58.104. Penalty and Responsibility for Violation.

§58.130. Shrimp License Buyback Program.

§58.150. Sale, Purchase, and Handling of Shrimp--General Rules.

§58.160. Taking or Attempting To Take Shrimp (Shrimping)--General Rules.

§58.161. Shrimping in Outside Waters.

§58.162. Shrimping in Inside Waters--General Rules.

§58.163. Shrimping in Inside Waters--Commercial Bay Shrimping.

§58.164. Shrimping Inside Waters--Commercial Bait Shrimping

§58.165. Non-commercial (Recreational) Shrimping

Subchapter C. Statewide Crab Fishery Proclamation

§58.201. Crab License Management Program.

§58.202. Definitions.

§58.203. Licensing.

§58.204. License Expiration.

§58.205. Display of License.

§58.206. Issuance and Renewal of Commercial Crab Fisherman's License.

§58.207. License Transfer.

§58.208. Limit on Number of Licenses Held; Designated License Holder.

§58.209. License Suspension and Revocation.

§58.210. License Buyback Program.

Subchapter D. Finfish Fishery Proclamation

§58.301. Delegation of Authority.

§58.302. Display of License.

§58.303. License Transfer.

§58.304. License Buyback Program.

This review is pursuant to the Texas Government Code, §2001.039.

The Commission will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reasons for adopting the sections under review continue to exist and to determine whether the rules reflect current legal, policy, and procedural considerations. Final consideration of this rules review is scheduled for the Parks and Wildlife Commission on August 26, 2004.

Any questions or written comments pertaining to this notice of intention to review should be directed to Gene McCarty, Chief of Staff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX , 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200404535
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: July 15, 2004

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The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

CHAPTER 61. DESIGN AND CONSTRUCTION

Subchapter A. Contracts for Public Works

§61.21. General.

§61.22. Soliciting Bids.

§61.23. Submission and Receipts of Bids.

§61.24. Award of Bids.

§61.25. Solicitation, Evaluation, and Selection of Proposals.

§61.26. Award in Response to Proposals.

Subchapter B. Procedural Guide for Land and Water Conservation Fund Program

§61.81. Application Procedures.

Subchapter C. Boat Ramp Construction and Rehabilitation

§61.101. General.

§61.102. Fees.

§61.103. Requirements of Applicants.

Subchapter D. Guidelines for Administration of Local Land and Water Conservation Fund Projects

§61.121. Policy.

Subchapter E. Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Program

§61.131. Policy.

§61.132. Texas Recreation and Parks Account Grants Manual.

§61.133. Grants for Outdoor Recreation Programs.

§61.134. Grants for Indoor Recreation Programs.

§61.135. Grants for Community Outdoor Outreach Programs.

§61.136. Grants for Small Communities.

§61.137. Grants for Regional Parks.

This review is pursuant to the Texas Government Code, §2001.039.

The Commission will accept comments for 30 days following the publication of this notice in the Texas Register as to whether the reasons for adopting the sections under review continue to exist and to determine whether the rule reflects current legal, policy, and procedural considerations. Final consideration of this rules review is scheduled for the Parks and Wildlife Commission on August 26, 2004.

Any questions or written comments pertaining to this notice of intention to review should be directed to Gene McCarty, Chief of Staff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX , 78744. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-200404537
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: July 15, 2004

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Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of Title 4, Texas Administrative Code, Part 1, Chapter 20, concerning cotton pest control, pursuant to the Texas Government Code, §2001.039 and readopts Chapter 20 as proposed in the notice of proposed rule review published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5799). No comments were received on the proposal.

Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposed amendments to Chapter 20, Subchapter A, concerning General Provisions, §20.1 and 20.3; Subchapter B, concerning Quarantine Requirements, §20.10 and 20.16; and Subchapter C, concerning Stalk Destruction Program, §20.20 and §20.22. These were also published in the June 11, 2004, issue of the *Texas Register* (29 TexReg 5697). No comments were received on that proposal and the department has adopted those sections without changes to the proposal.

The assessment of Chapter 20, Subchapters A, B and C, by the department at this time, indicates that along with the adoption by the department of its proposed amendments to §20.1, §20.3, §20.16, §20.20 and §20.22, the reason for readopting without changes all remaining sections in Chapter 20 Subchapters A, B and C, continues to exist.

TRD-200404480
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 12, 2004

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The Texas Department of Agriculture (the department) and the Texas Agricultural Finance Authority (Authority) adopt the review of Title 4, Texas Administrative Code, Part I, Chapter 24, concerning the Authority's Farm and Ranch Finance Program; Chapter 26, concerning the Authority's Linked Deposit Program; Chapter 28, concerning the Authority's Financial Assistance Program; and Chapter 30, concerning the Authority's Young Farmer Loan Guarantee Program, without changes to their proposal, and readopt Chapters 24, 26, 28 and 30 without changes. The proposed notice of intention to review was published in the June 4, 2004, issue of the *Texas Register* (29 TexReg 5649). No comments were received on the proposed notice of intent to review.

Section 2001.039 requires states agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist. The department and the Board have determined that the reason for readoption of all sections in Title 4, Part 1, Chapters 24, 26, 28 and 30 continues to exist.

TRD-200404464
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 8, 2004

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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: 25 TAC §289.252(ii)(2)

Radionuclides	Limit	Unsealed Sources			Sealed Sources
		10^3	10^4	10^5	10^{10}
Ce-142, Pr-141, Nd-144, Nd-145, Sm-146, Sm-147, Sm-148, Gd-148, Gd-150, Gd-151, Gd-152, Tb-159, Dy-154, Dy-156, Ho-165, Hf-174, W-180, Pt-190, Pb-210, Bi-209, Bi-209m, Po-208, Po-209, Po-210, Ra-226, Ac-227, Th-228, Th-229, Th-230, Pa-231, U-232, U-233, U-234, U-235, U-236, Np-235, Np-237, Pu-236, Pu-238, Pu-239, Pu-240, Pu-241, Pu-242, Pu-244, Am-241, Am-242m, Am-243, Cm-242, Cm-243, Cm-244, Cm-245, Cm-246, Cm-247, Cm-248, Bk-247, Bk-249, Cf-248, Cf-249, Cf-250, Cf-251, Cf-252, Es-254, Any Alpha-emitting radionuclide not listed above or mixtures of unknown alpha emitters of unknown composition	0.01 µCi	.01 mCi	0.1 mCi	1.0 mCi	100 Ci
Be-10, Al-26, Si-32, Ar-39, Ar-42, K-40, Ca-45, Ca-48, Ti-44, V-49, V-50, Fe-60, Zn-70, Ge-68, Ge-76, Kr-81, Sr-90, Zr-96, Mo-100, Tc-98, Rh-101, Rh-102, Pd-107, Ag-108m, Cd-113m, Cd-116, Sn-121m, Sn-123, Sn-124, Sn-126 Te-121m, Te-123, Te-130, I-129, La-137, La-138, Ce-139, Nd-150, Pm-143, Pm-144, Pm-145, Pm-146, Sm-145, Eu-150, Tb-157, Tb-158, Dy-159, Ho-166m, Lu-173, Lu-174, Lu-174m, Lu-175, Lu-176, Lu-177m, Hf-172, Hf-182, Ta-179, Re-184m, Re-187, Re-189, Os-194, Ir-199m2, Pt-192, Pt-198, Hg-194, Pb-202, Pb-205, Bi-208, Ra-228, Np-236, Bk-248, Any radionuclide other than alpha-emitting radionuclides not listed above or mixtures of beta emitters of unknown composition	0.1 µCi	0.1 mCi	1.0 mCi	10 mCi	1.0 kCi
Na-22, Co-60, Ru-106, Ag-110m, Cs-134, Ce-144, Eu-152, Eu-154, Bi-210	1.0 µCi	1.0 mCi	10 mCi	100 mCi	10 kCi
Cl-36, Ca-45, Mn-54, Ni-63, Zn-65, Se-75, Rb-87, Zr-93, Nb-93m, Cd-109, In-115, Sb-125, Ba-133, Ba-135, Cs-137, Gd-153, Eu-155, Tm-170, Tm-171, W-181, Tl-204	10 µCi	10 mCi	100 mCi	1.0 Ci	100 kCi
C-14, Fe-55, Co-57, Ni-59, Kr-85, Tc-97, Tc-99, Pt-193, Ir-194, Th (natural), Th-232, U(natural), U-238	100 µCi	100 mCi	1.0 Ci	10 Ci	1.0 MCi
H-3	1.0 mCi	1 Ci	10 Ci	100 Ci	10 MCi

Figure: 31 TAC §69.22(d)

Adjusted Criteria

Score Range	Monetary Value
1 - 5.9	**$5.00** [~~$3.00~~]
6 - 8.9	**$13.50** [~~$8.00~~]
9 - 10.9	**$26.00** [~~$15.50~~]
11 - 12.9	**$59.50** [~~$35.50~~]
13 - 14.9	**$105.50** [~~$63.00~~]
15 - 16.9	**$273.50** [~~$163.00~~]
17 - 18.9	**$881.50** [~~$525.50~~]
19 - 20.9	**$1,929.50** [~~$1,150.50~~]
21 - 23.9	**$4,780.50** [~~$2,850.50~~]
24 - 36.9	**$11,907.50** [~~$7,100.50~~]

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing

MULTIFAMILY HOUSING REVENUE BONDS

(PROVIDENCE AT MARSHALL MEADOWS)

SERIES 2004

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on July 30, 2004 at 6:00 p.m., at the Texas Department of Transportation Facility - Bexar Metro Office, 9320 S.E. Loop 410, San Antonio, Texas 78223, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $15,000,000, the proceeds of which will be loaned to Chicory Court XXV, LP, a non-profit housing partnership, to finance the acquisition, construction, rehabilitation or renovation of a multifamily housing property (the "Property") located in the city of San Antonio, Texas. The public hearing, which is the subject of this notice, will concern the Providence at Marshall Meadows Apartments to be constructed at Espada and Loop 410, San Antonio, Texas and to contain approximately 250 apartments. The Property will be owned by Chicory Court XXV, LP.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to Katherine Closmann at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 424.

Persons who intend to appear at the hearing and express their views are invited to contact Katherine Closmann in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Katherine Closmann prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Smith, ADA Responsible Employee, at 1-888-638-3555, ext .400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Laura Smith at 1-888-638-3555, ext. 400, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Katherine Closmann at kclosmann@tsahc.org.

TRD-200404517
David Long
President
Texas State Affordable Housing Corporation
Filed: July 13, 2004

♦ ♦ ♦

Texas Cancer Council

Request for Applications

Introduction:

The Texas Cancer Council (the Council) announces the availability of state funds to be awarded to support the *Texas Cancer Plan*. Funds will be awarded to the selected applicant (entity or individual) that develops an effective 'Cancer Resource Enhancement Program' that provides direct assistance to the Council and its cancer projects to increase and enhance funding for cancer control in Texas. This will expand the Council's ability to implement all four goals of the *Texas Cancer Plan.*

Initial funding will be awarded from December 1, 2004 through August 31, 2005 and the maximum amount will be $56,500 for that time period. If the selected applicant is successful, the 'Cancer Resource Enhancement Program' may be a multi-year project; however, the selected applicant must reapply each year for continuation funds. Future funding beyond year one will be contingent upon selected applicant's success, and is projected to be up to $75,000 for FY 2006. Success will be measured by the overall effectiveness of the Program in securing additional funds for the Council and its cancer projects.

Purpose:

The purpose of this Request for Applications (RFA) is to solicit statewide applications to assist the Council in identifying, seeking, and securing public or private funds that enhance cancer control efforts and further the goals of the *Texas Cancer Plan*.

Eligibility requirements:

To be considered for funding, an application must be submitted by an entity or individual that will serve as the fiscal agent and legal contractor for the project. The lead entity may be a governmental agency, educational institution, a nonprofit organization, a for-profit organization or an individual applicant.

Application requirements:

An original application and five copies are due at the Council office by **5 p.m. on Tuesday, September 07, 2004.** Applications must be submitted according to the Council's application instructions and forms. **Applications sent by facsimile machine or electronic mail will not be accepted.** Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials and forms can be found in the back of the Project Guide. The Project Guide and a copy of the *Texas Cancer Plan* can be obtained by calling (512) 463-3190 or on the web at www.tcc.state.tx.us. To find the Project Guide on our web site, look under Funding Opportunities, inside the gray box.

Applicant qualifications:

The applicant should demonstrate:

5 years of successful experience in seeking and securing supplemental, enhancement or continuation funds for non-profits, governmental entities or community-based organizations;

Knowledge and skills in strategic planning and program and budget development;

Significant project management and organizational skills;

The ability to work well within time constraints;

Strong computer skills;

Excellent written, oral and interpersonal skills;

Evidence of the ability to work collaboratively with partners to secure funding;

Evidence of ability to form relationships and partnerships with funding entities; and

Evidence of ability to develop marketing tools.

The applicant is expected to have at least **one full time staff person** dedicated to the successful implementation of this program. Success in securing health related grants or funds for programs that serve underserved populations is desirable, since the Council emphasizes services to underserved Texans.

Program requirements: The 'Cancer Resource Enhancement Program' funded under this RFA must establish a program that actively seeks and successfully secures additional cancer control funds for the Texas Cancer Council and its projects. This program will:

Create an innovative, effective process to identify and acquire potential cancer prevention and control funding (public and private) that includes actively seeking funding announcements and sending regular and timely electronic notification of opportunities to TCC and funded programs;

Provide for each TCC funded community project (approximately 25 projects) contact information for a minimum of five potential funding sources;

Pursue a close working relationship with TCC staff and all TCC Project Directors and demonstrate persistence in working with them to apply for funds;

Maintain an updated resource list of potential cancer control funding sources that will be made available on the TCC website;

Expand upon an existing 'how to' guide that teaches Council projects how to seek and secure additional funding, including tips on creating a development plan as well as seeking and making application for grants;

Develop and implement tools and tips to assist projects with marketing themselves to potential fundors;

Provide monthly progress reports to the Council that address efforts and successes in identifying funding opportunities and applying for funds;

Provide quarterly performance reports as outlined in the TCC Project Guide;

Develop and utilize a database to monitor funding activities and progress; and

Provide a formal annual report that describes the program's effectiveness. The report is due to the Council on August 31, 2005. (If the program is funded a second year, a formal report describing the programs success would be due June 15, 2006.)

Coordination with the Council may include visits to Council headquarters in Austin 2-3 times per year. Working closely with TCC Project Directors may include travel to the location of community projects.

Funding awards:

TCC staff will review applications for completeness and technical merit. The Council will make final funding decisions on or about November 5, 2004. Written notification of funding decisions will be sent on or about November 8, 2004.

The Council's funding decision will be based on:

Applicant's qualifications to successfully accomplish the project;

Reasonableness of budgeted amounts and appropriateness of budget justifications;

Evidence of a sound and effective program for accomplishing the project; and

Completeness and clarity of the application.

All Council projects are funded via a cost reimbursement basis. Requests for reimbursement may be submitted monthly or quarterly, as preferred by the project.

It is anticipated that one project will be selected under this initiative to receive Council funding. Council funding is based on the merit of the application received and the availability of funding.

All Council funded projects must submit annual continuation applications. The Council will award annual continuation contracts based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding.

The Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

Use of funds:

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings or reduction of deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, or to duplicate existing resources or services.

Additional information:

For additional information about this funding announcement, contact Jane Osmond, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190, ext. 107, or josmond@tcc.state.tx.us.

TRD-200404461
Jane Osmond
Program Manager
Texas Cancer Council
Filed: July 8, 2004

♦ ♦ ♦

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 July 1, 2004, through July 8, 2004. The public comment period for these projects will close at 5:00 p.m. on August 13, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: TMR Exploration, Inc.; Location: The project is located in Galveston West Bay State Tract 21 S/2, approximately 14 miles southwest of Hitchcock, Texas in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Hoskins Mound, Texas. Approximate UTM Coordinated in NAD 27 (meters): Zone 15: Easting: 293,034.862; Northing: 3,229,547.463. Project Description: The applicant proposes to drill and maintain wells in State Tract 21, Galveston West Bay, and install a production platform, well guards, and lay flow lines (not sales lines) for the production of oil and gas. The water depth at the proposed site is 5 feet. The bay bottom of the proposed well location is soft mud and no oysters or shell reefs exist within a 500-foot radius. CCC Project No.: 04-0215-F1; Type of Application: U.S.A.C.E. permit application #23465 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Railroad Commission under §401 of the Clean Water Act.

Applicant: Brown & Root Energy Services; Location: The project is located along the Houston Ship Channel, at 14035 Industrial Road, in Harris; County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289300; Northing: 3292650. Project Description: The applicant is requesting an extension of time to complete work previously approved in Permit No. 21136. The applicant has not completed 500 linear feet of the 800 linear feet of previously approved bulkhead. They are also requesting to add maintenance dredging for 10 years. CCC Project No.: 04-0216-F1; Type of Application: U.S.A.C.E. permit application #21136(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Texas Department of Transportation; Location: The project is located at the intersection of the Trinity River and Interstate 10 (I-10) in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Cove, Texas. Approximate UTM Coordinates in NAD 27 (meters): Start: Zone 15; Easting: 328154; Northing: 3301596. End: Zone 15; Easting: 330714; Northing: 3302028. Project Description: The applicant proposes to replace the existing Trinity River Bridge, which will result in a discharge of fill material into wetlands and open water for the approach and bridge bents/pilings. The U.S. Coast Guard is responsible for Section 10 of the Rivers and Harbors Act authorization of the bridge over the Trinity River. The proposed bridge will impact approximately 1.2 acres of waters of the U.S. The approach fill will impact 1.186 acres of wetlands and open water, comprised of one acre of emergent wetlands and 0.186 acre of forested wetlands. The bents will impact 0.014 acre of emergent wetlands. The applicant proposes to compensate for the impacts to jurisdictional waters by withdrawing credits at the Blue Elbow Swamp Mitigation Bank at a 5:1 ratio. CCC Project No.: 04-0218-F1; Type of Application: U.S.A.C.E. permit application #23445 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A §1251-1387).

Applicant: Joe Hughes; Location: The project is located along the Houston Ship Channel, at 14035 Industrial Road, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Jacinto City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289400; Northing: 3294000. Project Description: The applicant is requesting an extension of time to add maintenance dredging for 10 years. The (05) amendment allowed the applicant to dredge to 34 feet mean low tide (MLT) in the "D" yard. In the (06) amendment, the dredge depth in "D" yard was changed to 28 feet MLT. The applicant is requesting to revert back to the previously approved depth of 34 feet MLT in "D" yard. The dredge depth in "B" yard will remain at 28 feet MLT. For the purpose of maintenance dredging, the applicant is proposing to add the following dredge material placement areas to the previously approved permit: Peggy Lake, Lost Lake, Clinton, House Tract, Dynegy, Galena Park, and Jacintoport Dredge Material Storage and Reclamation Facilities. CCC Project No.: 04-0219-F1; Type of Application: U.S.A.C.E. permit application #09776(07) is being evaluated under §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. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or gwen.spriggs@glo.state.tx.us. Comments should be sent to Ms. Spriggs at the above address or by fax at 512/475-0680.

TRD-200404520

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: July 14, 2004

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2004

An additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective July 1, 2004 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Clear Lake Shores (Galveston Co)	2084081	.017500	.080000
Lake Worth (Tarrant Co)	2220040	.017500	.082500
Sundown (Hockley Co)	2110043	.017500	.080000

An additional 1/4% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective July 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Webberville (Travis Co)	2227203	.020000	.082500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective July 1, 2004 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Archer City (Archer Co)	2005023	.020000	.082500
Hondo (Medina Co)	2163021	.020000	.082500

An additional 1% city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2% as permitted under Article 5190.6, Section **4A** plus an additional 1/2% as permitted under Article 5190.6, Section **4B** will become effective July 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Fairview (Collin Co)	2043027	.020000	.082500

The 1/8% city sales and use tax for Sports and Community Venue was abolished and will become effective July 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
San Antonio (Bexar Co)	2015012	.015000	.077500

A 1/4% special purpose district sales and use tax will become effective July 1, 2004 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Lake Worth Crime Control and Prevention District	5220709	.002500	SEE NOTE 1

A 2% special purpose district sales and use tax will become effective July 1, 2004 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Travis County Emergency Services District No. 3	5227551	.020000	SEE NOTE 2

NOTE 1: The boundaries of the Lake Worth Crime Control and Prevention District are the same as the City of Lake Worth. The City of Lake Worth currently imposes a 1 3/4% city sales tax. The total rate in the City of Lake Worth will be 8.25%.

NOTE 2: The Travis County Emergency Services District No. 3 is located in the southwestern portion of Travis County. The Travis County Emergency Services District No. 3 does **not** include any area in the City of Austin or the Austin MTA. The unincorporated areas of Travis County in zip codes 78735, 78736 and 78737 are partially located within the Travis County Emergency Services District No. 3. Contact the district representative at 512/288-5534 for additional boundary information.

TRD-200404511
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Filed: July 13, 2004

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Notice of Contract Awards

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, and Chapter 403, Section 403.028, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract awards in connection with Request for Proposals (RFP #169a) to assist the Comptroller in conducting Medicaid Registered Nurse utilization reviews:

A contract was awarded to: E. Ponson Consulting, 806 Hollybluff Street, Austin, Texas 78753. The total amount of this contract is not to exceed $43,000.00. The term of the contract is July 5, 2004 through December 31, 2004.

A contract was awarded to: ECS Consultants (ECS), 8900 Rockcrest Drive, Austin, Texas 78759. The total amount of this contract is not to exceed $77,000.00. The term of the contract is July 5, 2004 through December 31, 2004.

The project reviews will be completed on or before December 31, 2004.

The notice of request for proposals (RFP #169a) was published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3848).

TRD-200404530
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 14, 2004

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Notice of Contract Awards

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, and Chapter 403, Section 403.028, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract awards in connection with Request for Proposals (RFP #168a) to assist the Comptroller in conducting Medicaid Managed Care Premium Payment Audits and reviews:

A contract was awarded to: Interim Solutions for Business, Inc., 7107 Beauford Drive, Austin, Texas 78750. The total amount of this contract is not to exceed $40,000.00. The term of the contract is July 2, 2004 through December 31, 2004.

The project reviews will be completed on or before December 31, 2004.

The notice of request for proposals (RFP #168a) was published in the April 16, 2004, issue of the *Texas Register* (29 TexReg 3848).

TRD-200404531
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 14, 2004

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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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 07/19/04 - 07/25/04 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 07/19/04 - 07/25/04 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200404501
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 13, 2004

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Texas Education Agency

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-04-034 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education; private or independent institutions of higher education; organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)); or governmental entities. At least one member of the governing board of the group requesting the charter must attend one REQUIRED APPLICANT CONFERENCE. Conferences are scheduled for Friday, August 20, 2004; Thursday, October 21, 2004; Friday, December 3, 2004; and January 2005 (to be determined) in

Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701-1494. Failure to attend one of the conferences will disqualify an applicant from submitting an application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Application receipt deadline for review is February 24, 2005. The completed application must be received by the TEA Document Control Center at 1701 N. Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, on or before 5:00 p.m. Central Time on the deadline date.

Project Amount. TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open- enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently 200 charters approved under §12.101 and two charters approved under §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-04-034), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701-1494; by calling (512) 463-9575; or at http://www.tea.state.tx.us/charter/rfas/rfascharter.htm.

Further Information. For clarifying information about the open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-200404523
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 14, 2004

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Request for Applications Concerning Public Senior College/University Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-04-040 from eligible entities to operate open-enrollment charter schools. Eligible entities include Texas public senior colleges and universities.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. A public senior college or university open-enrollment charter school may operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Completed applications can be received by the TEA Document Control Center at 1701 N. Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, at any time.

Project Amount. TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open- enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Public Senior College/University Open-Enrollment Charter Guidelines and Application* (RFA #701-04-040), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701-1494; by calling (512) 463-9575; or at http://www.tea.state.tx.us/charter/rfas/rfascharter.htm.

Further Information. For clarifying information about the public senior college/university open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-200404524
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 14, 2004

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Employees Retirement System of Texas

Request for Proposal/Offer

TEXAS EMPLOYEES GROUP BENEFITS PROGRAM

PHARMACY BENEFIT MANAGEMENT

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas (ERS) is issuing a Request for Proposals/Offers (RFP/RFO) for qualified Pharmacy Benefit Managers (PBMs) to provide pharmacy benefit management services to the HealthSelect of Texas (HealthSelect), currently a self-funded, managed care, point-of-service (POS) health plan throughout Texas under the Texas Employees Group Benefits Program (GBP), formerly known as the Texas Employees Uniform Group Insurance Program (UGIP), beginning September 1, 2005 through August 31, 2008. PBMs must provide the level of benefits required in the RFP and meet other requirements that are in the best interest of the GBP participants.

A PBM wishing to respond to this proposal must: 1) have a current license to serve in Texas as a Third Party Administrator from the Texas Department of Insurance (if applicable), and 2) have been providing prescription benefit management services for an organization with a member participation of no less than 100,000 or an aggregate of 1,000,000 covered lives for a minimum of three (3) years, and 3) reflect a pharmacy network capable of servicing the GBP membership without member access disruption by March 31, 2005. The Contract is a separate document from the proposal and must be taken separately from ERS' Website. The Contract must be signed in blue ink, with all required exhibits completed and attached and without amendment or revision, by a duly authorized officer of the PBM and returned with the PBM's proposal.

The RFP/RFO will be available in mid-August from ERS' web site. To access the RFP/RFO from the web site, interested PBMs must either fax their request on their company letterhead to the attention of Sally Garcia at (512) 867-3380, or send their request via email to agarcia@ers.state.tx.us to receive their access code. An email request must include the name of the PBM, street address, phone number, fax number, and email address (if applicable).

To be eligible for consideration, the PBM is required to submit seven (7) copies of the proposal. One (1) original with the fully executed Contract and Business Associate Agreement (BAA), both **signed in blue ink**, and without amendment or revision with all required completed exhibits attached and an additional two (2) copies of the proposal, including all required exhibits must be provided in printed format. The remaining four (4) copies must be submitted exclusively and completely in disk format using Word 98 or Word 2000 application. All materials must be executed as noted above and must be received by ERS by 12:00 Noon, (CDT) on October 1, 2004.

ERS will base its evaluation and selection of a PBM on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP/RFO, operating requirements, pharmacy network, experience serving large group programs, past experience, administrative quality, program fees and other relevant

criteria. Each proposal will be evaluated both individually and relative to the proposal of other qualified PBMs. Complete specifications will be included with the RFP/RFO.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of the GBP and its participants. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP/RFO's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFP/RFO.

The RFP/RFO will be discussed at a mandatory PBM Web conference on September 1, 2004, beginning at 2:00 p.m., (CDT). You may access ERS' Website for details regarding the Web-based conference by selecting the Vendor link. ERS will not pay any costs incurred by any entity in responding to this notice or the RFP/RFO or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP and its participants.

TRD-200404533
Ann S. Fuelberg
Executive Director
Employees Retirement System of Texas
Filed: July 14, 2004

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Request for Proposal/Offer

TEXAS EMPLOYEES GROUP BENEFITS PROGRAM

ADMINISTRATIVE SERVICES ONLY

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas (ERS) is issuing a Request for Proposals/Offers (RFP/RFO) for qualified organizations to provide Health Care administration (network management and utilization review services for HealthSelect of Texas (HealthSelect), currently a self-funded, managed care, point-of-service (POS) health plan under the Texas Employees Group Benefits Program (GBP), formerly known as the Texas Employees Uniform Group Insurance Program (UGIP). The Contract will begin September 1, 2005 and extend through August 31, 2008. Third Party Administrators (TPAs) must provide the level of benefits required in the RFP and meet other requirements that are in the best interest of the GBP participants.

A TPA wishing to respond to this proposal must: 1) have a current license to serve in Texas as a TPA from the Texas Department of Insurance (if applicable), and 2) have been providing administrative, network management and utilization review services for organizations with a membership of no less than 100,000 or an aggregate of 1,000,000 covered lives for a minimum of three (3) years, and 3) reflect a provider network capable of servicing the GBP membership without member access disruption by March 31, 2005. The Contract is a separate document from the proposal and must be taken separately from ERS' Website. The Contract must be signed in blue ink, with all required exhibits completed and attached and without amendment or revision, by a duly authorized officer of the TPA and returned with the TPA's proposal.

The RFP/RFO will be available in mid-August from ERS' Website. To access the RFP/RFO from the Website, interested TPAs must either fax their request on their company letterhead to the attention of Sally Garcia at (512) 867-3380, or send their request via email to agarcia@ers.state.tx.us to receive their access code. An email request must include the name of the TPA, street address, phone number, fax number, and email address (if applicable).

To be eligible for consideration, the TPA is required to submit seven (7) copies of the proposal. One (1) original with the fully executed Contract and Business Associate Agreement (BAA), both **signed in blue ink**, and without amendment or revision with all required completed exhibits attached and an additional two (2) copies of the proposal, including all required exhibits must be provided in printed format. The remaining four (4) copies must be submitted exclusively and completely in disk format using Word 98 or Word 2000 application. All materials must be executed as noted above and must be received by ERS by 12:00 Noon, (CDT) on October 1, 2004.

ERS will base its evaluation and selection of a TPA on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP/RFO, operating requirements, provider network, experience serving large group programs, past experience, administrative quality, program fees and other relevant criteria. Each proposal will be evaluated both individually and relative to the proposal of other qualified TPAs. Complete specifications will be included with the RFP/RFO.

ERS reserves the right to reject any and/or all proposals and/or call for new proposals if deemed by ERS to be in the best interests of the GBP and its participants. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP/RFO's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFP/RFO.

The RFP/RFO will be discussed at a mandatory TPA Web conference on September 2, 2004, beginning at 2:00 p.m., (CDT). You may access ERS' Website for details regarding the Web-based conference by selecting the Vendor link. ERS will not pay any costs incurred by any entity in responding to this notice or the RFP/RFO or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP and its participants.

TRD-200404534
Ann S. Fuelberg
Executive Director
Employees Retirement System of Texas
Filed: July 14, 2004

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Panjwani Enterprises, Inc., Docket No. 2002-0454-PST-E on 06/17/2004 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DMV Stainless USA, Inc., Docket No. 2002-1077-AIR-E on 06/17/2004 assessing $2,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rich O'Connell, Staff Attorney at 512/239-5528, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Quality Caliche Pit, Inc., Docket No. 2003-0197-MSW-E on 06/17/2004 assessing $18,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at 817/588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Michael Reid and Angela Reid dba Mike's Mini Mart, Docket No. 2003-0843-PST-E on 06/17/2004 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Snehal Patel, Staff Attorney at 713/422-8928, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ultra Fuel & Oil, LLC, Docket No. 2003-0535-AIR-E on 06/17/2004 assessing $650 in administrative penalties with $130 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calpine Natural Gas, L.P., Docket No. 2003-1231-AIR-E on 06/17/2004 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick Tube, L.P., Docket No. 2003-1402-AIR-E on 06/17/2004 assessing $2,650 in administrative penalties with $530 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Don Calvert dba Big Jacks Grocery, Docket No. 2003- 0864-PST-E on 06/17/2004 assessing $3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at 512/239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell-Citgo Refining, L.P., Docket No. 2003-1418- AIR-E on 06/17/2004 assessing $8,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at 512/239-1892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shaheen Grocery, Inc., Docket No. 2003-1080-PST-E on 06/17/2004 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at 512/239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amy Food, Inc., Docket No. 2003-0580-AIR-E on 06/17/2004 assessing $2,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johns Manville, Docket No. 2003-1086-AIR-E on 06/17/2004 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at 512/239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Protherm Services Group, LLC, Docket No. 2003-1439- IWD-E on 06/17/2004 assessing $3,680 in administrative penalties with $736 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at 512/239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Graham, Docket No. 2003-0595-WR-E on 06/17/2004 assessing $4,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ME TECH, Inc., Docket No. 2003-0905-PST-E on 06/17/2004 assessing $1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Davis, Enforcement Coordinator at 512/239-6793, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2003-1453-AIR-E on 06/17/2004 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stericycle, Inc., Docket No. 2003-1462-AIR-E on 06/17/2004 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at 512/239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bollinger Texas City, L.P., Docket No. 2003-1301-AIR-E on 06/17/2004 assessing $2,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Allen Verry, Docket No. 2004-0040-MWD-E on 06/17/2004 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crown Cork & Seal Company, Inc., Docket No. 2003- 1315-AIR-E on 06/17/2004 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at 512/239-1892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kayco Composites, LLC and Amon Enterprises, Inc., Docket No. 2003-1333-IWD-E on 06/17/2004 assessing $18,000 in administrative penalties with $3,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at 409/899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bay Oil Company, Docket No. 2003-1508-PST-E on 06/17/2004 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Pacifico Transporation, Ltd., Docket No. 2003- 0131-MLM-E on 06/17/2004 assessing $12,780 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at 512/239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEMA Oil and Gas Company, Docket No. 2003-1521- AIR-E on 06/17/2004 assessing $4,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmie Wayne Massey dba Oak Hollow Plant, Docket No. 2003-1352-MWD-E on 06/17/2004 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Performance Food Group of Texas, L.P., Docket No. 2003-0798-PST-E on 06/17/2004 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at 512/239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Linde Gas, Inc., Docket No. 2003-1358-AIR-E on 06/17/2004 assessing $2,025 in administrative penalties with $405 deferred.

Information concerning any aspect of this order may be obtained by contacting Brandon Smith, Enforcement Coordinator at 512/239-4471, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bradley Glasscock dba Super C West, Docket No. 2003- 1015-PST-E on 06/17/2004 assessing $2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Lewison, Enforcement Coordinator at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regal Food Service, Inc., Docket No. 2003-0485-AIR-E on 06/17/2004 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding New Blessings, Inc. dba AM-PM Mini Mart II, Docket No. 2003-0811-PST-E on 06/17/2004 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Food Group, L.P., Docket No. 2003-1199-PWS- E on 06/17/2004 assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alamo Star, Inc. dba Glen Super Mart, Docket No. 2003- 0214-PST-E on 06/17/2004 assessing $3,900 in administrative penalties with $780 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pan-American General Hospital dba Southwest General Hospital, Docket No. 2002-0046-PST-E on 06/28/2004 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney, at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mike Khader dba Phillips 66, Docket No. 2002-1241- PST-E on 06/28/2004 assessing $11,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin DeLeon, Staff Attorney, at 512/239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baytown Business, Inc. dba Baytown Express, Docket No. 2002-1168-PST-E on 06/28/2004 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney, at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Enviro Save Oil Recovery Company of America, Docket No. 2002-0887-MSW-E on 06/28/2004 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney, at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Management of Texas, Inc., Docket No. 2002- 0935-MLM-E on 06/28/2004 assessing $244,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney, at 512/239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, L.P., Docket No. 2003- 0199-AIR-E on 06/28/2004 assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney, at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Majic Market, Inc. dba Brown Trail Fina, Docket No. 2003-0227-PST-E on 06/28/2004 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin DeLeon, Staff Attorney, at 512/239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Russell E. Brimhall, Jr. dba Reb'l Environmental Oil Recovery, Docket No. 2002-1263-MSW-E on 06/28/2004 assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney, at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AA & MM International, Inc. dba Amburn Food Mart, Docket No. 2003-1386-PST-E on 06/28/2004 assessing $13,500 in administrative penalties with $2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dutch Boy Cleaners, Inc., Docket No. 2003-0533-EAQ-E on 06/28/2004 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Field Services Management, Inc., Docket No. 2003-1233-AIR-E on 06/28/2004 assessing $4,600 in administrative penalties with $920 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leading Edge Aviation Services Amarillo, Inc., Docket No. 2003-0268-IHW-E on 06/28/2004 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator, at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning, Docket No. 2003-1400-AIR-E on 06/28/2004 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator, at 512/239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Freeman Decorating Services, Inc., Docket No. 2003- 1401-AIR-E on 06/28/2004 assessing $8,400 in administrative penalties with $1,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator, at 512/239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nasrolah Kamalie dba Lucky Way Food Store, Docket No. 2003-1576-PST-E on 06/28/2004 assessing $525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FMC Technologies, Inc., Docket No. 2003-1406-IWD-E on 06/28/2004 assessing $19,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petromax Oil, Inc., Docket No. 2003-1247-PST-E on 06/28/2004 assessing $1,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Niles Jennet & Donald Lo Piccolo dba Bluebonnet Dairy, Docket No. 2003-1257-AGR-E on 06/28/2004 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator, at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brazoria County Municipal Utility District No. 21, Docket No. 2003-0575-MWD-E on

06/28/2004 assessing $3,565 in administrative penalties with $713 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City International, Ltd. dba Snappy Mart 4, Docket No. 2003-0323-PST-E on 06/28/2004 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crane Plumbing,LLC dba CR/PL II, L.L.C., Docket No. 2003-1436-AIR-E on 06/28/2004 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator, at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McCall-T, Ltd. dba Sterling McCall Toyota, Docket No. 2003-1273-PST-E on 06/28/2004 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amerada Hess Corporation, Docket No. 2003-1446-AIR- E on 06/28/2004 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator, at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AEP Texas North Company, Docket No. 2003-1110- IHW-E on 06/28/2004 assessing $7,970 in administrative penalties with $1,270 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator, at 512/239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mack Massey Motors, L.P., Docket No. 2003-1282-PST- E on 06/28/2004 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator, at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sea Lion Technology, Inc., Docket No. 2003-1454-AIR- E on 06/28/2004 assessing $970 in administrative penalties with $194 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator, at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Reynolds dba Hickory Ridge of Palestine, L.L.C., Docket No. 2002-0610-MWD-E on 06/28/2004 assessing $14,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator, at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hunt Oil Company, Docket No. 2003-0642-AIR-E on 06/28/2004 assessing $28,125 in administrative penalties with $5,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator, at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemical Specialties, Inc. dba Mineral Research & Development, Docket No. 2003-0948-IWD-E on 06/28/2004 assessing $10,600 in administrative penalties with $2,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bruce G. Bennefield, Jr., Docket No. 2003-1307-SLG-E on 06/28/2004 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator, at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aledo Independent School District, Docket No. 2003- 1316-MWD-E on 06/28/2004 assessing $2,580 in administrative penalties with $516 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at 817/588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TPI Petroleum, Inc., Docket No. 2003-1318-MLM-E on 06/28/2004 assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator, at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Palmer, Docket No. 2003-1319-MWD-E on 06/28/2004 assessing $18,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator, at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Graham, Docket No. 2003-0450-PWS-E on 06/28/2004 assessing $16,302 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator, at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enhanced Business Corporation dba Food Store, Docket No. 2003-1006-PST-E on 06/28/2004 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator, at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nueces County Water Control & Improvement District No. 5, Docket No. 2003-0473-MLM-E on 06/28/2004 assessing $6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at 361/823 3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mahraj Corporation dba Arapaho Texaco, Docket No. 2003-0802-PST-E on 06/28/2004 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jay Brummett and George Faddoul dba Bastrop Corner Store, Docket No. 2003-0474-PST-E on 06/28/2004 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator, at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Applied Industrial Materials Corporation, Docket No. 2003-1363-MWD-E on 06/28/2004 assessing $940 in administrative penalties with $188 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Round Rock, Docket No. 2003-1364-PWS-E on 06/28/2004 assessing $555 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Walter Lassen, Staff Attorney, at 512/239-0513, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Earth, Docket No. 2003-1368-MLM-E on 06/28/2004 assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator, at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tucker Fuel & Oil Company, Inc., Docket No. 2004- 0193-PST-E on 06/28/2004 assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator, at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Three L., Inc. dba Sugar Land Bulk Oil Co., Docket No. 2004-0198-PST-E on 06/28/2004 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aztec Rental Center No. 2, Inc., Docket No. 2004-0251- PST-E on 06/28/2004 assessing $1,540 in administrative penalties with $308 deferred.

Information concerning any aspect of this order may be obtained by contacting Christina McLaughlin, Enforcement Coordinator, at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KDT Construction, Inc., Docket No. 2004-0257-OSI-E on 06/28/2004 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Miller, Enforcement Coordinator, at 325/698-6136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harlingen Medical Center, L.P., Docket No. 2004-0279- PST-E on 06/28/2004 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI Waste Systems of North America, Inc., Docket No. 2002-0936-MLM-E on 06/28/2004 assessing $28,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney, at 512/239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding University of Texas Medical Branch at Galveston, Docket No. 2004-0124-PST-E on 06/28/2004 assessing $2,750 in administrative penalties with $550 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator, at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200404450
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 7, 2004

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Notice of Opportunity to Participate in Permitting Matters

A person may request to be added to a mailing list for public notices processed through the Office of the Chief Clerk for air, water, and waste permitting activities at the TCEQ. You may request to be added to: (1) a permanent mailing list for a specific applicant name and permit number; and/or (2) a permanent mailing list for a specific county or counties.

Note that a request to be added to a mailing list for a specific county will result in notification of all permitting matters affecting that particular county.

To be added to a mailing list, send us your name and address, clearly specifying which mailing list(s) to which you wish to be added. Your written request should be sent to the TCEQ, Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, TX 78711-3087.

Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-200404448
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 7, 2004

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Notice of Water Quality Applications

The following notices were issued during the period of June 23, 2004 through June 30, 2004.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ALVIN has applied for a renewal of TPDES Permit No. WQ0010005001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The application also includes a request for a temporary variance to the existing dissolved oxygen water quality standard for the Mustang Bayou. The variance would authorize a three-year period in which the Commission will consider the site-specific standard for Mustang Bayou and determine whether to adopt the standard or require the existing water quality standard to remain in effect. The facility is located approximately 3,000 feet west of the intersection of County Roads 160 and 158, and approximately 3.5 miles northeast of the intersection of State Highway 35 and Farm-to-Market Road 2917, south of the City of Alvin in Brazoria County, Texas.

CITY OF ANDREWS has applied for a renewal of Permit No. 10119-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 1,200,000 gallons per day via irrigation on 320 acres of City-owned agricultural land/golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1/1 miles east-southeast of the intersection of U.S. Highway 385 and State Highway 115 (Broadway Avenue), 2,000 feet south of the intersection of State Highway 115 and South East 1001. The evaporation/storage ponds are located to the south of the plant site. The 320 acres of agricultural irrigation land is to the east of South East 1001. The golf course is in the northeast quadrant of the City of Andrews in Andrews County, Texas. The facility and disposal site are located in the drainage area of Colorado River Below Lake J. B. Thomas in Segment No. 1412 of the Colorado River Basin.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10351-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located on the west side of Farm-to-Market Road 2410 (a.k.a. 38th Street) and approximately 0.2 mile north of the intersection of U.S. Highway 190 (Business) and Farm-to-Market Road 2410 in the City of Killeen in Bell County, Texas.

BOLING INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13710-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 11,217 gallons per day via subsurface drainfields with a minimum area of 44,867 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located north of the intersection of Avenue E and 5th Street, approximately 2.0 miles east of Farm-to-Market Road 1301 and approximately 2.5 miles southeast of the City of Boling in Wharton County, Texas.

CITY OF CAMERON has applied for a renewal of TPDES Permit No. 10004-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The facility is located approximately 1,300 feet south-southeast of the intersection of U.S. Highways 190 and 77, State Highway 36 and Adams Street; and approximately one-half mile east of the intersection of Oak Street and Gillis Street in Milam County, Texas.

CITY OF DAWSON has applied for a renewal of TPDES Permit No. 10026-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day. The facility is located approximately 0.5 mile south-southeast of Farm-to-Market Road 709 and approximately 0.5 mile east-northeast of Farm-to-Market Road 1838 in the southeast section of the City of Dawson in Navarro County, Texas.

CITY OF DRIPPING SPRINGS has applied for a new permit, Proposed Permit No. WQ0014488001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 162,500 gallons per day via subsurface drip irrigation of 37.43 acres of public access pastureland and athletic fields. This permit will not authorize a discharge of pollutants into waters in the State. The facility and onsite disposal areas will be located approximately 0.55 mile east of the intersection of Ranch Road 12 and Farm-to-Market Road 150, as measured along Farm-to- Market 150, and, from that point, approximately 1,110 feet south of Farm-to-Market Road 150 in Hays County, Texas. The offsite disposal area will be located approximately 0.44 mile south of the intersection of U.S. Highway 290 and Ranch Road 12, as measured along Ranch Road 12, and from that point, approximately 1,280 feet east of Ranch Road 12 in Hays County, Texas.

GRAND MISSION MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. WQ0014231001 to authorize an increase in the discharge of treated domestic wastewater flow limitations in the interim phases and to authorize an increase in the final volume not to exceed an annual average flow of 1,000,000 gallons per day. The facility is located approximately 0.9 mile south and 0.5 mile west of the intersection of Farm-to-Market Road 1093 and Harlem Road in Fort Bend County, Texas.

HANOVER COMPRESSION LIMITED PARTNERSHIP has applied for renewal of Permit No. 11975-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 6,000 gallons per day via irrigation of 50 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately four miles east of the City of Alleyton, 2,100 feet west of the intersection of Interstate Highway 10 and Farm-to-Market Road 949 in Colorado County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a major amendment to TPDES Permit No. 10104-001 to authorize an increase in the two- hour peak discharge of treated domestic wastewater from 6,250 gallons per

minute to 9,722 gallons per minute and to add a final clarifier and a chlorine contact chamber. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,350,000 gallons per day. The facility is located at 611 Avenue E at the west end of Avenue E on the east shoreline of White's Lake in the Community of Highlands in Harris County, Texas.

HARRIS-FORT BEND COUNTIES MUNICIPAL UTILITY DISTRICT NO. 5 has applied for a major amendment to TPDES Permit No. 13775-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 700,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 6,000 feet southeast of the intersection of Katy-Fort Bend and Roesner Roads, approximately two miles southeast of Katy in Fort Bend County, Texas.

CITY OF IREDELL has applied for a renewal of TPDES Permit No. 11565-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 700 feet east of the intersection of Kidd Street and Meridian Street, approximately 1000 feet south of the North Bosque River on the east side of the City of Iredell in Bosque County, Texas.

CITY OF LA PORTE has applied for a renewal of TPDES Permit No. 10206-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,560,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 187 acres. The applicant has also applied to the TCEQ for approval of a new pretreatment program under the TPDES program. The facility is located at 1301 South 4th Street, approximately 0.5 mile southeast of the intersection of State Highway 146 and Fairmont Parkway in Harris County, Texas. The irrigation site is located on 187 acres of golf course and park land directly south of the wastewater treatment facility.

LAUGHLIN-THYSSEN, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014504001, to authorize the discharge of water treatment plant forebay settled sludge supernatant at a daily average flow not to exceed 990,000 gallons per day. The facility is located adjacent to Hunting Bayou, west of the intersection of the confluence of Hunting Bayou and the Houston Ship Channel, 1.1 miles upstream of the Federal Road crossing of Hunting Bayou in Harris County, Texas.

CITY OF LA VERNIA has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0011258001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 110,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located on River Street approximately 2000 feet east of Farm-to-Market Road 775 in the City of La Vernia in Wilson County, Texas.

LONG POINT ESTATES, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014512001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility will be located 4,000 feet southwest of the intersection of Farm-to-Market Road 1994 and Farm-to-Market Road 361 in Fort Bend County, Texas.

LOST CREEK MUNICIPAL UTILITY DISTRICT has applied for renewal of Permit No. WQ0011319001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day (GPD) in the interim phase and 52,000 GPD in the final phase via evaporation and surface irrigation of 102 acres of the Lost Creek Golf Course, 20 acres of the adjacent 38 acre tract of land and on Lot 1, Ben Crenshaw Golf Course Subdivision, which is comprised of 186.42 acres of the Coore-Crenshaw Golf Course. In addition, the permittee is authorized to transfer 22,000 GPD to Travis County Municipal Utility District No. 4 (TCEQ Permit No. 13206001). This permit will not authorize a discharge of pollutants into waters in the State. The facility is located at 6104 1/2 Turtle Point Road, approximately 800 feet east of the intersection of Lost Creek Boulevard and Turtle Point Road in the Lost Creek Subdivision in Travis County, Texas. The disposal sites (i.e. the Lost Creek Golf Course and the adjacent tract) are located in the Lost Creek Subdivision, the Barton Creek Subdivision, and the Coore-Crenshaw Golf Course in the Barton Creek Subdivision in Travis County, Texas. Sludge is taken to the City of Austin Wastewater Treatment Plant, TCEQ Permit No. 10543-11 in Travis County, Texas.

CITY OF MALAKOFF has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010738002, to authorize the discharge of treated filter backwash water at a daily average flow not to exceed 60,000 gallons per day. The facility is located along Farm-to-Market Road 3062, approximately 0.5 mile west of the intersection of Farm-to- Market Road 3062 and State Highway 198, northwest of the City of Malakoff in Henderson County, Texas.

CITY OF MARLIN has applied for a renewal of TPDES Permit No. 10110-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located on the west side of an unnamed county road approximately 2.5 miles southwest of the intersection of State Highway 6 and State Highway 712 in Falls County, Texas.

CITY OF MILES has applied for renewal of Permit No. 10138-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 80,000 gallons per day via irrigation of 115 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at the northeastern corner of the intersection of Farm-to-Market Road 1692 and Paint Rock Road in Runnels County, Texas.

REICHHOLD, INC. which operates an organic chemicals manufacturing plant, has applied for a major amendment of TPDES Permit No. 00662 to authorize removal of effluent limitations and monitoring requirements for organic compounds and phenols at Outfall 001; a reduction in the biomonitoring frequency at Outfall 001; and a reduction in monitoring frequency for biochemical oxygen demand, total suspended solids, chemical oxygen demand, ammonia nitrogen, and total zinc at Outfall 001. The current permit authorizes the discharge of treated process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 100,000 gallons per day via Outfall 001. The facility is located at 1503 Haden Road, approximately 0.33 miles south of the intersection of Interstate Highway 10 and Market Street, in the City of Houston, Harris County, Texas.

ROYAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 10873-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located immediately southeast of the intersection of Farm-to-Market Road 359 and North Street in the City of Pattison in Waller County, Texas.

CITY OF SHALLOWATER has applied for a renewal of Permit No. WQ0010609001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 290,000 gallons per day via surface irrigation of 54 acres of non-public access

agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located southeast of the intersection of U.S. Highway 84 and Farm-to-Market Road 179, adjacent to the City of Shallowater in Lubbock County, Texas.

TRD-200404449
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 7, 2004

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

The Health and Human Services Commission (HHSC) announces the award of contract number 529-04-289 to Community Ties of America, Inc. an entity with a principal place of business at 214 Overlook Court, Suite 105, Brentwood, Tennessee, 37027. The contractor will provide consulting services for the purpose of conducting a feasibility study to assist HHSC in obtaining the necessary information to identify, recommend and develop policy options to integrate funding, coordinate services and to develop a comprehensive provider base to decrease the number of children placed in institutions and increase the number of Texas children with serious emotional disturbances (SED) who can receive quality treatment in their homes and communities.

The total value of the contract will not exceed $88,500.00. The contract was executed on June 30, 2004, and will expire on June 30, 2005, unless extended or terminated sooner by the parties. The contractor will produce numerous documents and reports during the term of the contract, with the final report due by January 31, 2005.

TRD-200404468
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 9, 2004

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Notice of Hearing on Proposed Consumer Directed Services Provider Payment Rates Under the Consolidated Waiver

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 9, 2004, to receive public comment on proposed Consumer Directed Services (CDS) payment rates for in-home respite, out-of-home respite, and attendant care services in the Consolidated Waiver (CW) program. The CW program is operated by the Texas Department of Human Services (TDHS).

These payment rates are proposed to be effective October 1, 2004. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which require public hearings on proposed payment rates. The public hearing will be held on August 9, 2004, at 9:00 a.m. in Room 1047 of the Braker Center Building, at 11209 Metric Boulevard, Austin, Texas 78758-4021.

Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Donna Moore, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Ms. Moore, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Moore at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Donna Moore, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Donna Moore, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1174, by August 3, 2004, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.506 for the Consolidated Waiver and 1 TAC §355.114 for Consumer Directed Services.

TRD-200404519
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 14, 2004

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FARMERS AND RANCHERS LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Oklahoma City, Oklahoma.

Application to add the D/B/A name of OPTICARE VISION SERVICES to AECC TOTAL VISION HEALTH PLAN OF TEXAS, Inc., a domestic health maintenance organization (HMO). The home office is in Dallas, Texas.

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, within 20 days after this notice is published in the *Texas Register*.

TRD-200404528
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 14, 2004

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of EOSCOMP L.L.C., a foreign third party administrator. The home office is TEMPE, ARIZONA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200404529
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 14, 2004

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Texas Lottery Commission

Instant Game No. 454 "$35,000 Crossword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 454 is "$35,000 CROSSWORD". The play style is "key symbol match with a prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 454 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 454.

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, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square.

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. 454 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
■	

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. 454 - 1.2E

CODE	PRIZE
THR	$3.00
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 $3.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $100 or $500.

I. High-Tier Prize - A prize of $5,000 or $35,000.

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 (454), 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: 454-0000001-000.

L. Pack - A pack of "$35,000 CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be shown on the front of the pack; the back of ticket 124 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 000 will be shown on the front of the pack and the front of ticket 124 will be shown on the back of the pack.

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 "$35,000 CROSSWORD" Instant Game No. 454 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 "$35,000 CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 139 (one hundred thirty-nine) possible play symbols. The player must scratch off all 18 (eighteen) boxed squares in the YOUR LETTERS to reveal 18 play symbol letters; then scratch the corresponding letters found in the CROSSWORD puzzle grid play area. If a player scratches at least three (3) complete "words" in the CROSSWORD puzzle grid play area, the player will win the corresponding prize indicated in the prize legend. For each of the 18 play symbol letters revealed in YOUR LETTERS play area, the player must reveal the identical key play symbol letter in the CROSSWORD puzzle grid play area. Letters combined to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the CROSSWORD puzzle grid. Only letters within the CROSSWORD puzzle grid that are matched with the YOUR LETTERS can be used to form a complete "word". The three (3) small letters outside the squares in the YOUR LETTERS area are for validation purposes and cannot be used to play CROSSWORD. In the CROSSWORD puzzle grid, every lettered square within an unbroken horizontal or vertical sequence must be matched with the YOUR LETTERS to be considered a complete "word". Words within a words are not eligible for a prize. For example, all the YOUR LETTERS play symbols S, T, O, N. E, must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. . Letters combined to form a complete "word" must appear in an unbroken vertical or top to bottom horizontal string of letters in the CROSSWORD. To form a complete word, an unbroken string of letters cannot be interrupted by a block space. Any other words contained within a complete word is not added or counted for purposes of the prize legend. Every single letter in the vertical or top to bottom horizontal unbroken string must: (a) be one of the 18 larger outlined play symbols letters revealed in the play area, YOUR LETTERS, and (b) be included to form a complete "word". The possible complete words for this ticket are contained in the CROSSWORD play area. Each possible complete word must consist of three (3) or more letters and occupy an entire word space. Players must match all of the play symbol letters to the identical key play symbols in a possible complete word in order to complete the word. If the letters revealed form three (3) or more complete words each of which occupy a complete word space on the CROSSWORD play area, the player will win the corresponding prize shown in the prize legend for forming that number of complete words. 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. One hundred thirty-nine (139) possible 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;

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 139 (one hundred thirty-nine) possible 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 139 (one hundred thirty-nine) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 139 (one hundred thirty-nine) possible 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 within a book will not have identical patterns.

B. Adjacent tickets in a pack will not have identical patterns.

C. Each ticket consists of a Your Letters area and one Crossword Puzzle Grid.

D. The Crossword Puzzle Grid will be formatted with at least 1000 configurations (i.e. puzzle layouts not including words).

E. All Crossword Puzzle Grid configurations will be formatted within a grid that contains 11 spaces (height) by 11 spaces (width).

F. Each word will appear only once per ticket on the Crossword Puzzle Grid.

G. Each letter will only appear once per ticket in the YOUR LETTERS play area.

H. Each Crossword Puzzle Grid will contain the following: a) 4 sets of 3 - letter words b) 5 sets of 4 - letter words c) 3 sets of 5 - letter words d) 3 sets of 6 - letter words e) 1 set of 7 - letter words f) 2 sets of 8 - letter words g) 1 set of 9 - letter words. h) 19 words per puzzle per ticket.

I. There will be a minimum of three (3) vowels in the YOUR LETTERS play area.

J. The length of words found in the Crossword Puzzle Grid will range from 3-9 letters.

K. Only words from the approved word list will appear in the Crossword Puzzle Grid.

L. None of the prohibited words (see attached list) will appear horizontally (in either direction), vertically, (in either direction) or diagonally (in either direction) in the CALL LETTERS play area.

M. You will never find a word horizontally (in either direction), vertically (in either direction) or diagonally (in either direction) in the YOUR LETTERS play area that matches a word in the Crossword Puzzle Grid.

N. Each Crossword Puzzle Grid will have a maximum number of different grid formations with respect to other constraints. That is, for identically formatted Crossword puzzles (i.e. the same grid), all "approved words" will appear in every logical (i.e. 3 letter word = 3 letter space) position, with regards to limitations caused by the actual letters contained in each word (i.e. will not place the word ZOO in a position that causes an intersecting word to require the second letter to be "Z", when in fact, there are no approved words with a "Z" in the second letter position).

O. No one (1) letter, with the exception of vowels, will appear more than nine (9) times in the Crossword Puzzle grid.

P. No ticket will match eleven (11) words or more.

Q. Each ticket may only win one (1) prize.

R. Three (3) to ten (10) completed words will be revealed as per the prize structure.

S. All non-winning tickets will contain: a) One (1) completed word approximately 20% of the time b) Two (2) completed words approximately 80% of the time.

T. NON-WINNING TICKETS: Sixteen (16) to eighteen (18) YOUR LETTERS will open at least one (1) letter in the Crossword Puzzle Grid.

U. NON-WINNING TICKETS: At least 15% of tickets will open at least one (1) letter in the Crossword Puzzle Grid with all 18 letters.

V. NON-WINNING TICKETS 100% of the tickets will have at least five (5) words as a near-win. A near win is defined as a word with all letters less one (1) revealed in the Crossword Puzzle Grid. (For example, using the word EYE and EAGLE. If missing the letter "E" these words would be considered a near-win).

2.3 Procedure for Claiming Prizes.

A. To claim a "$35,000 CROSSWORD" Instant Game prize of $3.00, $5.00, $10.00, $20.00, $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 $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 2.3.C of these Game Procedures.

B. To claim a "$35,000 CROSSWORD" Instant Game prize of $5,000 or $35,000, 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 "$35,000 CROSSWORD" 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 Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$35,000 CROSSWORD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$35,000 CROSSWORD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, 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 therefor, 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. 454. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 454 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	948,000	6.33
$5	756,000	7.94
$10	144,000	41.67
$20	60,000	100.00
$100	12,600	476.19
$500	2,200	2,727.27
$5,000	30	200,000.00
$35,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.12. 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. 454 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. 454, 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.

The following is a list of words approved by the Texas Lottery for use in this game.

ACE	BOW	FAR	INN	NOD	RAN
ACT	BOY	FEE	IVY	NOR	RAP
ADD	BUD	FEW	JAB	NOT	RAT
ADO	BUG	FEZ	JAR	NOW	RAW
AFT	BUS	FIR	JAW	NUT	RAY
AGE	BUY	FIT	JAY		RED
AGO	CAB	FIX	JIG	OAK	RIB
AHA	CAN	FOE	JOB	OAR	RIG
AID	CAP	FOG	JOG	OAT	RIM
AIM	CAR	FOR	JOY	ODD	RIP
AIR	CAT	FOX	JUG	OFF	ROT
ALL	COB	FRY	KEY	OIL	ROW
ALP	COW	FUN	KID	OLD	RUB
AMP	COY	FUR	KIN	ONE	RUG
AND	CRY	GAG	KIT	OPT	RUN
ANT	CUB	GAP	LAB	ORE	RUT
ANY	CUE	GEM	LAD	OUR	RYE
APE	CUP	GET	LAG	OUT	SAW
APT	CUT	GUT	LAP	OWE	SAY
ARC	DAB	GUY	LAW	OWL	SEA
ARM	DAY	HAM	LEE	OWN	SEE
ART	DEN	HAT	LEG	PAN	SET
ASH	DEW	HAY	LET	PAR	SEW
ASK	DIG	HEM	LOW	PAW	SHY
AWE	DIM	HEN	MAD	PAY	SIP
AYE	DIP	HER	MAN	PEA	SIR
BAD	DOG	HIM	MAP	PEG	SIT
BAH	DOT	HIP	MAT	PEN	SIX
BAN	DRY	HIS	MAY	PEP	SKI
BAR	DUB	HIT	MET	PET	SLY
BAT	DUO	HOE	MID	PIE	SON
BAY	DYE	HOG	MIX	PIG	SOW
BED	EAR	HOP	MOB	PIN	SPA
BEE	EAT	HOT	MOO	PIT	SPY
BEG	EBB	HOW	MOP	PLY	SUB
BET	EGG	HUB	MUD	POD	SUM
BID	EGO	HUE	MUG	POP	SUN
BIG	ELK	HUG	NAB	PRO	TAB
BIN	END	HUM	NAP	PRY	TAG
BIT	ERA	HUT	NET	PUT	TAN
BOA	EYE	ICE	NEW	RAG	TAP
BOG	FAN	INK	NIL	RAM	TAR

TEA	ACHE	BARK	BRAN	CLUE	DAZE
TEE	ACID	BARN	BRIM	COAL	DEAL
TEN	ACRE	BASE	BROW	COAT	DEAN
TIE	AFAR	BASH	BUCK	COAX	DECK
TIP	AHOY	BASS	BULB	CODE	DEED
TOE	AIDE	BATH	BULK	COIL	DEEM
TON	AJAR	BEAD	BULL	COIN	DEEP
TOO	AKIN	BEAK	BUMP	COLD	DEER
TOP	ALAS	BEAM	BUNK	COLT	DENT
TOT		BEAN	BUNT	COMB	DESK
TOW	ALLY	BEAR	BUOY	CONE	DIAL
TOY	ALOE	BEAU	BURY	COOK	DICE
	ALSO	BEEF	BUSH	COOL	DILL
TRY	ALTO	BEEP	BUSY	COPE	DIME
TUB	AMID	BEET	CAGE	COPY	DIRE
TUG	ANEW	BELL	CAKE	CORD	DIRT
TWO	ANTE	BELT	CALF	CORE	DISH
URN	ANTI	BEND	CALL	CORK	DISK
USE		BENT	CALM	CORN	DIVE
VAN	AQUA	BEST	CAMP	COST	DOCK
VAT	ARCH	BIAS	CANE	COVE	DOLL
VET	AREA	BIKE	CAPE	COZY	DOME
VIA	ARID	BILL	CARD	CREW	DONE
	ATOM	BIND	CARE	CRIB	DOOR
WAG	AUNT	BIRD	CARS	CROP	DOVE
WAX	AURA	BLOT	CART	CROW	DOWN
WAY	AUTO	BLUE	CASE	CUBE	DRAW
WEB	AVID	BLUR		CUFF	DROP
WET	AWAY	BOAT	CAST	CURB	DRUM
WHO	AXIS	BODY	CAVE	CURE	DUAL
WHY	AXLE	BOIL	CELL	CURL	DUCK
WIG	BABY	BOLD	CHAT	CUTE	DUCT
WIT	BACK	BOLT	CHEF	CYAN	DUEL
YAK	BAIL	BOND	CHIN	DALE	DUET
YEN	BAIT	BOOK	CHIP	DAMP	DULL
YES	BAKE		CITE	DARE	DUNE
YET	BALD	BOOT	CITY	DARK	DUSK
YOU	BALK	BOSS	CLAM	DART	DUST
ZAP	BALL	BOTH	CLAW	DASH	DUTY
ZIP	BAND	BOUT	CLAY	DATA	EACH
ZOO	BANK	BOWL	CLIP	DATE	EARL
ABLE	BARE	BRAG	CLUB	DAWN	EARN

EAST
EASY
ECHO
EDGE
EDIT
ELSE
EPIC
ETCH
EVEN
EXAM
EXIT
FACE
FACT
FADE
FAIL
FAIR
FALL
FAME
FARE
FARM
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FILE
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FIRE
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FLAW
FLEA
FLEE
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FOAM
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FOND
FOOD
FOOT
FORK
FORM
FORT
FOUR
FREE
FROG
FROM
FUEL
FULL
FUND
FUSE
FUSS
GAIN
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GAME
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GIFT
GIRL
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ZEST
ZINC
ZONE
ZOOM
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ABIDE
ABODE
ABOUT
ABOVE

ABYSS
ACORN
ACTOR
ACUTE
ADAGE
ADAPT
ADEPT
ADIEU
ADIOS
ADMIT
ADOPT
ADORE
ADULT
AFFIX
AFTER
AGAIN
AGENT
AGILE
AGONY
AGREE
AHEAD
AISLE
ALARM
ALBUM
ALERT
ALIAS
ALIBI
ALIEN
ALIGN
ALIKE
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ALLOY
ALOHA
ALONE
ALONG
ALOOF
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AMUSE
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ANKLE
ANNEX
ANNOY
ANTIC
ANVIL
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ASSET
ATLAS
ATOLL
ATTIC
AUDIO
AUDIT
AVAIL
AVERT
AVOID
AWAIT
AWAKE
AWARD
AWARE
AWASH
AWFUL
AWOKE
AXIOM
AZURE
BACON
BADGE
BAGEL
BAKER
BANJO
BARGE
BARON
BASIC
BASIL
BASIN

BASIS
BATCH
BATON
BAYOU
BEACH
BEARD
BEECH
BEGIN
BEIGE
BEING
BELOW
BENCH
BERET
BERRY
BIRCH
BIRDS
BISON
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BRAID
BRAIN
BRAKE
BRAND
BRASS
BRAVE
BRAVO
BRAWN
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BRIAR
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BRIEF
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BROOK
BROOM
BROWN
BRUSH
BUDDY
BUDGE
BUGLE
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BUILT
BUNCH
BURST
CABIN
CABLE
CACHE
CADET
CAMEL
CAMEO
CANAL
CANDY
CANOE
CARGO
CARRY
CARVE
CATCH
CAUSE
CEASE
CEDAR
CELLO
CHAIN
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CHILI
CHILL
CHIME
CHIRP
CHORD
CHORE
CHUTE
CIDER
CIVIC
CIVIL
CLAIM
CLASH
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CLEAN
CLEAR
CLERK
CLICK
CLIFF
CLIMB
CLOAK
CLOCK
CLOSE
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CLOUD
CLOWN
CLUES
COACH
COAST
COBRA
COMET
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CONGA
CORAL
COUCH
COUNT
COURT
COVER
CRAFT
CRANE
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CRAVE
CRAWL
CREEK
CREST
CRISP
CROWD
CROWN
CRUSH
CRUST
CURVE
CYCLE
DAILY
DAIRY
DAISY
DANCE
DEBIT
DECAL
DECOY
DELAY
DELTA
DENIM
DEPOT
DEPTH
DEUCE
DIARY
DIGIT
DINER
DISCO
DITCH
DODGE
DOUBT
DOUGH
DOZEN
DRAFT
DRAIN
DRAMA
DREAM
DRESS
DRIFT
DRIVE
DWELL
EAGLE
EARLY
EARTH
EIGHT
ELBOW
EMCEE
EMPTY
ENACT
ENJOY
ENTER
ENTRY
ENVOY
EQUAL
ERASE
ERODE
ERROR
ESSAY
EVADE
EVENT
EVERY
EXACT
EXIST
EXTRA
FABLE
FACET
FAINT
FAULT
FAUNA
FEAST
FEIGN
FEMUR
FENCE
FETCH
FEVER
FIELD
FINAL
FLAGS
FLAIR
FLAKE
FLAME
FLARE
FLASH
FLEET
FLOAT
FLOCK
FLOOR
FLORA
FLOSS
FLOUR
FLUID
FLUTE
FOCUS
FORCE
FOUND
FRAIL
FRAME
FRANK
FRESH
FRONT
FROST
FROWN
FRUIT
FUNNY
GAMES
GIANT
GIVEN
GLARE
GLASS
GLAZE
GLITZ
GLOBE
GLOOM
GLORY
GLOSS

GLOVE
GOING
GOOSE
GORGE
GRACE
GRADE
GRAIN
GRAND
GRANT
GRAPE
GRAPH
GRASP
GRASS
GRAVY
GREAT
GREEN
GREET
GRILL
GRINS

GROOM
GROUP
GUARD
GUESS
GUEST
GUIDE
HABIT
HANDS
HANDY
HAPPY
HARDY
HASTE
HATCH
HEARD
HEART
HEAVY
HEDGE
HELLO
HINGE
HIPPO
HITCH
HOBBY

HONEY
HONOR
HORSE
HOTEL
HOUND
HOUSE
HUMAN
HUMID
HUMOR
HUNCH
HURRY
HUTCH
HYDRO
HYPER
IDEAL
IDEAS
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BANDAGE
BANQUET
BARBELL
BARGAIN
BAROQUE
BARRIER
BATTERY
BEANBAG
BEARING
BECAUSE

BEDPOST
BEDROCK
BEEHIVE
BELATED
BELLBOY
BENEATH
BENEFIT
BEQUEST
BESIDES
BESIEGE
BETWEEN
BICYCLE
BILLION
BIOLOGY
BISCUIT
BLANKET
BLATANT
BLOSSOM
BLUNDER
BOBSLED
BOLSTER
BONANZA
BONFIRE
BOOSTER
BOREDOM
BOULDER
BOUQUET
BOWLING
BRACKET
BREATHE
BREVITY
BRISTLE
BROTHER
BUFFALO
BUILDER
BULLPEN
CABARET
CABBAGE
CABINET
CABOOSE
CADENCE
CALCIUM

CALORIE
CALVARY
CALYPSO
CANTEEN
CANYONS
CAPITAL
CAPSULE
CAPTAIN
CAPTION
CAPTIVE
CARAMEL
CAREFUL
CARIBOU
CARRIER
CARTOON
CASCADE
CATALOG
CAUTION
CEILING
CENTRAL
CENTURY
CERTAIN
CERTIFY
CHAMBER
CHANNEL
CHAPTER
CHARADE
CHARIOT
CHARTER
CHASSIS
CHATTER
CHEETAH
CHICKEN
CHIMNEY
CHRONIC
CIRCUIT
CITIZEN
CLASSIC
CLEANER
CLEANSE
CLIMATE
CLUSTER

CLUTTER
COASTAL
COCONUT
COLLECT
COLLEGE
COLLIDE
COMBINE
COMFORT
COMMAND
COMMEND
COMMENT
COMMUNE
COMPACT
COMPANY
COMPARE
COMPASS
COMPETE
COMPLEX
COMPUTE
CONCEAL
CONCEDE
CONCEPT
CONCERN
CONCERT
CONCISE
CONDUCT
CONDUIT
CONFIRM
CONFORM
CONFUSE
CONNECT
CONSENT
CONSIST
CONSOLE
CONSULT
CONSUME
CONTACT
CONTAIN
CONTENT
CONTEST
CONTEXT
CONTOUR

CONVENE
COOKIES

CORDIAL
CORONET
COUNTER
CURIOUS
CURTAIN
CUSHION
CYCLIST
CYCLONE
DAMSELS
DANCING
DECEIVE
DECIBEL
DECIMAL
DECLARE
DECLINE
DEFAULT
DEFENSE
DEFLECT
DEFROST
DEGREES
DELIGHT
DELIVER
DENSITY
DENTIST
DEPLETE
DEPOSIT
DEPRIVE
DERRICK
DESCEND
DESCENT
DESERVE
DESKTOP
DESPITE
DESSERT
DESTINY
DEVELOP
DEWDROP
DIAGRAM
DIALECT

DIAMOND
DICTATE
DIFFUSE
DIGITAL
DIGNIFY
DIGNITY
DILEMMA
DIPLOMA
DISCARD
DISCERN
DISCORD
DISCUSS
DISMISS
DISPLAY
DISPUTE
DISTANT
DISTILL
DISTORT
DISTURB
DIVERGE
DIVERSE
DIVIDED
DOLPHIN
DOORWAY
DORMANT
DRESSER
DRIZZLE
DYNAMIC
DYNASTY
EARDRUM
ECLIPSE
ECONOMY
EDITION
EDUCATE
ELEGANT
ELEMENT
ELEVATE
ELLIPSE
ELUSIVE
EMERALD
EMOTION
ENCLOSE
ENQUIRY
ENTROPY
EQUINOX
ERRATIC
ESSENCE
EVENING
EXAMINE
EXAMPLE
EXHAUST
EXPENSE
EXPLAIN
EXPRESS
EXTREME
FACTORS
FACTORY
FACULTY
FANFARE
FARTHER
FASHION
FATIGUE
FEATHER
FEATURE
FEDERAL
FEELING
FERTILE
FICTION
FINANCE
FINESSE
FISSION
FIXTURE
FLANNEL
FLATTEN
FLORIST
FOOLISH
FOREIGN
FOREVER
FORGIVE
FORMULA
FORTUNE
FORWARD
FOUNDER
FRAGILE
FRANTIC
FREEDOM
FREEWAY
FREIGHT
FRIGATE
FUNERAL
FURIOUS
GALLERY
GARNISH
GENERAL
GENERIC
GENUINE
GEOLOGY
GESTURE
GIRAFFE
GLACIAL
GLACIER
GLASSES
GLIMMER
GLIMPSE
GOLFING
GONDOLA
GOODBYE
GORILLA
GRADUAL
GRAMMAR
GRANOLA
GRAPHIC
GRAVITY
GRIDDLE
GRIZZLY
GROCERY
GUITARS
GYMNAST
HABITAT
HAIRCUT
HAIRPIN
HALOGEN
HAMMOCK
HAMSTER
HARMONY
HARNESS
HARVEST
HEALTHY
HEATHER
HEIRESS
HELPFUL
HELPING
HERRING
HERSELF
HEXAGON
HICKORY
HISTORY
HOBBIES
HOLIDAY
HONESTY
HOPEFUL
HORIZON
HOSTESS
HOUSTON
HOWEVER
HUSBAND
HYDRANT
HYGIENE
ICEBERG
IMAGINE
IMITATE
IMMENSE
IMPRESS
IMPRINT
IMPROVE
IMPULSE
INCLUDE
INDOORS
INERTIA
INFLATE
INHABIT
INHERIT
INQUIRE
INSPECT
INSPIRE
INSTALL
INSTANT
INSTEAD
INSTILL
IRONING
ISOLATE
ITALICS
ITEMIZE
JEWELER
JEWELRY
JOGGING
JUGGLER
JUNIPER
JUSTIFY
KETTLES
KEYHOLE
KINGDOM
KNEECAP
LACKING
LANDING
LANTERN
LASTING
LAUNDRY
LECTURE
LEISURE
LENGTHY
LENIENT
LEOPARD
LETTUCE
LEXICON
LIBERTY
LIBRARY
LICENSE
LIONESS
LIQUIDS
LITERAL
LOBSTER
LOGGING
LOOMING
LOTTERY
LOVABLE
LOYALTY
LOZENGE
LUGGAGE
LULLABY
MACHINE
MAGENTA
MAGICAL
MAGNIFY
MAILBOX
MAJESTY
MANAGER
MANDATE
MANNERS
MANSION
MARBLES
MARQUEE
MASONRY
MASSIVE
MAXIMUM
MEANING
MEASURE
MEDIATE
MEDICAL
MEETING
MENTION
MERCURY
MERMAID
MESSAGE
METEORS
MIGRATE
MILEAGE
MINERAL
MINIMAL
MINIMUM
MINUTES
MIRACLE
MISSILE
MISSING
MISSION
MISTAKE
MITTENS
MIXTURE
MOISTEN
MOLLUSK

MONITOR
MONSOON
MOORING
MORAINE
MORNING
MUFFLER
MUNDANE
MUSICAL
MUSKRAT
MUSTANG
MUSTARD
MYSTERY
NARRATE
NATURAL
NECKTIE
NEITHER
NEMESIS
NEPTUNE
NERVOUS
NETWORK
NEUTRAL
NOMINAL
NOMINEE
NONSTOP
NOSTRIL
NOTABLE
NOTHING
NOURISH
NOVELTY
NUMERAL
NURSERY
OATMEAL
OBSCURE
OBSERVE
OBVIOUS
OCTAGON
OCTOBER
OCTOPUS
ODYSSEY
OFFENSE
OPERATE
OPINION
OPTICAL
ORCHARD
OREGANO
ORGANIC
OSTRICH
OUTDOOR
OUTLOOK
OUTPOST
OUTRAGE
OUTSIDE
OVERALL
OVERJOY
OXIDIZE
PACIFIC
PACKAGE
PADDOCK
PADLOCK
PAGEANT
PAJAMAS
PANCAKE
PANTHER
PARADED
PARADOX
PARASOL
PARKING
PARSLEY
PARSONS
PARTIAL
PARTNER
PASSAGE
PASSIVE
PASTURE
PATIENT
PATRIOT
PATTERN
PAUSING
PAYLOAD
PEACOCK
PELICAN
PENALTY
PERCENT
PERFECT
PERFORM
PERFUME
PERHAPS
PERPLEX
PERSIST
PHANTOM
PIANIST
PICCOLO
PICTURE
PIGMENT
PILLOWS
PINBALL
PIONEER
PIRATES
PITCHER
PLANNED
PLASTER
PLASTIC
PLATEAU
PLATOON
PLIABLE
PLUMAGE
POLYGON
POMPOUS
POPCORN
POPULAR
PORTAGE
PORTRAY
POSTAGE
POSTURE
POWERED
PRAIRIE
PRECEDE
PREDICT
PREFACE
PRELUDE
PREMIUM
PRETEND
PRETZEL
PREVAIL
PREVENT
PREVIEW
PRIMARY
PRINTER
PRIVATE
PROBLEM
PROCEED
PROCESS
PROCURE
PRODUCE
PRODUCT
PROFILE
PROGRAM
PROJECT
PROMISE
PRONOUN
PROTECT
PROTEIN
PROVERB
PROVIDE
PROWESS
PRUDENT
PUDDING
PUMPKIN
PUPPIES
PURPOSE
PURRING
PURSUIT
PUZZLED
PYRAMID
QUALIFY
QUALITY
QUARTER
QUARTET
QUICKLY
QUIETLY
RACCOON
RADIATE
RADICAL
RAILWAY
RAINBOW
RAMBLER
RANCHER
RANKING
RAPPORT
RAVIOLI
READOUT
REALIGN
REALISM
REALITY
REALIZE
REALTOR
REASONS
REBOUND
REBUILD
RECEIPT
RECEIVE
RECITAL
RECLAIM
RECLINE
RECOVER
RECRUIT
RECTIFY
RECYCLE
REFEREE
REFINED
REFLECT
REFRAIN
REFRESH
REFUSAL
REGIMEN
REGULAR
REJOICE
RELAPSE
RELEASE
RELIEVE
REMARKS
REMNANT
REMODEL
RENEWAL
REPLACE
REPLICA
REPTILE
REQUEST
REQUIRE
RESERVE
RESIDUE
RESOLVE
RESPECT
RESPOND
RESTFUL
RESTORE
RETREAT
REUNION
REVENUE
REVERSE
REVOLVE
REWRITE
RHUBARB
ROASTED
ROMANCE
ROOFTOP
ROOSTER
ROSEBUD
ROUTINE
ROWBOAT
ROYALTY
RUNNING
SALVAGE
SANDALS
SANDBAG
SAPLING
SARCASM
SARDINE
SAUSAGE
SAWDUST
SAWFISH
SAWMILL
SCALLOP
SCAMPER
SCANNER
SCARLET
SCENTED
SCIENCE
SCOOTER
SCRATCH
SCREECH
SCRUPLE

SCUTTLE
SEAFOOD
SEAGULL
SEAPORT
SEASIDE
SEAWEED
SECTION
SEGMENT
SEISMIC
SELFISH
SELLOUT
SELTZER
SERIOUS
SERVANT
SERVICE
SESSION
SETBACK
SETTING
SETTLER
SEVENTY
SEVERAL
SHAMPOO
SHATTER
SHELTER
SHERIFF
SHIMMER
SHUDDER
SHUFFLE
SHUTTER
SIBLING
SIGNIFY
SILENCE
SILICON
SINCERE
SITTING
SIXTEEN
SKIRTED
SKYDIVE
SKYLARK
SLEIGHT
SLUMBER
SMARTLY
SNIPPET
SNORKEL
SNUGGLE
SOARING
SOCIETY
SOLDIER
SOMEDAY
SOPRANO
SPANIEL
SPARKLE
SPARROW
SPECIAL
SPINACH
SPINDLE
SPONSOR
SQUEEZE
STADIUM
STAMINA
STANDBY
STAPLER
STARTLE
STATION
STELLAR
STOMACH
STORAGE
STRANGE
STRETCH
STUDENT
STYLISH
SUBSIDE
SUCCEED
SUCCESS
SUGGEST
SUMMARY
SUNBURN
SUNDIAL
SUNDOWN
SUNRISE
SUPPORT
SUPPOSE
SUPREME
SURFACE
SURPLUS
SUSPEND
SUSTAIN
SWALLOW
SWEATER
SWIFTLY
SYMPTOM
SYNONYM
TARNISH
TEACHER
TEDIOUS
TENSION
TERRACE
TERRAIN
TERRIER
TEXTILE
THEATER
THERMAL
THIRSTY
THOUGHT
THROUGH
THUNDER
TOASTER
TONIGHT
TOOLBOX
TORNADO
TOURISM
TOURIST
TRACTOR
TRAFFIC
TRAGEDY
TRAILER
TRANSIT
TRAPEZE
TREETOP
TREMBLE
TRIBUTE
TRICEPS
TRILOGY
TRIUMPH
TRIVIAL
TROLLEY
TROUBLE
TRUMPET
TUESDAY
TUITION
TYPHOON
TYPICAL
UNAWARE
UNCOVER
UNDERGO
UNICORN
UNIFORM
UNKNOWN
UNUSUAL
UPFRONT
UPGRADE
UPSTAGE
UTENSIL
UTILITY
VACANCY
VACCINE
VALIANT
VAMPIRE
VANILLA
VARIETY
VARIOUS
VARNISH
VEHICLE
VENTURE
VERANDA
VERBOSE
VERDICT
VERSION
VERTIGO
VIBRANT
VICTORY
VILLAGE
VINEGAR
VINTAGE
VIRTUAL
VISIBLE
VISITOR
VITAMIN
VOLCANO
VOLTAGE
VOUCHER
VOYAGER
VULTURE
WALLABY
WARNING
WASHING
WAYBILL
WAYWARD
WEALTHY
WEATHER
WEDDING
WEEKEND
WELCOME
WESTERN
WHETHER
WHISKER
WHISPER
WHISTLE
WICHITA
WILDCAT
WINNING
WISHFUL
WITHOUT
WITNESS
WORKDAY
WRANGLE
WRAPPER
ZILLION
ZOOLOGY
ABDICATE
ABRASION
ABSOLUTE
ABUNDANT
ACADEMIC
ACCIDENT
ACCOLADE
ACCOUNTS
ACCURACY
ACCURATE
ACOUSTIC
ACQUAINT
ADDENDUM
ADDITION
ADEQUATE
ADHESIVE
ADJACENT
ADMONISH
ADVOCATE
AEROBICS
AFFINITY
AFFLUENT
AIRBORNE
AIRCRAFT
AIRPLANE
AIRSPEED
AIRTIGHT
ALLOCATE
ALPHABET
ALTITUDE
ALUMINUM
AMBITION
AMORTIZE
ANACONDA
ANALYSIS
ANCESTOR
ANECDOTE
ANNOUNCE
ANTELOPE
ANYTHING
APPENDIX
APPETITE
APPRAISE
APPROACH
APPROVAL
APTITUDE
AQUARIUM
ARACHNID
ARGUMENT
ARMCHAIR
AROMATIC
ARPEGGIO

ARRANGED
ARROGANT
ARTIFACT
ARTISTIC

ASSEMBLE
ASSEMBLY
ASTERISK
ASTEROID
ASTONISH
ATHLETIC
ATLANTIC
ATTITUDE
ATTORNEY
AUDIENCE
AUTOMATE
AVIATION
BACHELOR
BACKDROP
BACKFIRE
BACKPACK
BACKSPIN
BACKWARD
BACKYARD
BACTERIA
BAGPIPES
BALLPARK
BALLROOM
BANISTER
BARBECUE
BARRACKS
BASEBALL
BASEMENT
BATHROOM
BEGINNER
BEHAVIOR
BEVERAGE
BIRTHDAY
BLACKOUT
BLIZZARD
BLUEBIRD

BOATYARD
BONAFIDE
BOOKCASE
BOOKMARK
BOOKSHOP
BOOKWORM
BOULDERS
BOUNDARY
BOUTIQUE
BRACELET
BROCHURE
BUILDING
BULLETIN
BULLSEYE
BUNGALOW
CALCULUS
CALENDAR
CALLIOPE
CALORIES
CAMPAIGN
CAMPFIRE
CANISTER
CAPACITY
CARDINAL
CAREFREE
CARELESS
CARNIVAL
CARRIAGE
CASSETTE
CATAPULT
CATEGORY
CAUSEWAY
CAUTIOUS
CEREMONY
CHAMPION
CHARCOAL
CHARISMA
CHECKERS
CHEERFUL
CHESTNUT
CHIPMUNK
CINNAMON

CITATION
CLARINET
CLEARING
CODEWORD
COHERENT
COINCIDE
COLESLAW
COLLAPSE
COLONIAL
COLOSSAL
COMMERCE
COMPLAIN
COMPLETE
COMPOUND
COMPRESS
COMPUTER
CONCERTO
CONCLUDE
CONCRETE
CONFETTI
CONFLICT
CONFOUND
CONQUEST
CONSERVE
CONSIDER
CONSTANT
CONSUMER
CONTINUE
CONTRACT
CONTRAST
CONVERGE
CONVERSE
CONVINCE
COOKBOOK
CORRIDOR
CRITICAL
CROSSBAR
CUCUMBER
CUFFLINK
CUPBOARD
CUSTOMER
CYLINDER

DAFFODIL
DARKROOM
DAUGHTER
DAYDREAM
DAYLIGHT
DECEMBER
DECIPHER
DECISION
DEDICATE
DEFIANCE
DEFINITE
DELEGATE
DELICATE
DELIVERY
DESCRIBE
DESERVED
DESIGNER
DIAGNOSE
DIAGONAL
DIALOGUE
DIAMETER
DILIGENT
DIMINISH
DIPLOMAT
DIRECTOR
DISAGREE
DISASTER
DISCOUNT
DISCOVER
DISGUISE
DISKETTE
DISPATCH
DISPENSE
DISSOLVE
DISTANCE
DISTINCT
DISTRACT
DISTRICT
DIVIDEND
DIVISION
DOCUMENT
DOMESTIC

DOMINANT
DOMINION
DOUBTFUL
DOUGHNUT
DOWNHILL
DOWNTOWN
DRAWBACK
DRESSING
DRIVEWAY
DWELLING
ECONOMIC
EGGPLANT
ELDORADO
ELECTION
ELECTRIC
ELEPHANT
ELEVATOR
EMPHASIS
EMPLOYEE
EMPLOYER
ENGINEER
ENQUIRER
ENTIRETY
ENTRANCE
ENVELOPE
EPILOGUE
EQUALITY
EQUATION
ESTIMATE
EVALUATE
EVENTFUL
EVERYDAY
EXERCISE
EXPEDITE
EXTERIOR
EXTERNAL
EYEGLASS
FABULOUS
FAMILIAR
FAREWELL
FEEDBACK
FESTIVAL

FILAMENT
FIREWOOD
FLAGPOLE
FLAMINGO
FLOTILLA
FLOURISH
FOOTBALL
FORCEFUL
FORECAST
FOUNTAIN
FRACTION
FRAGMENT
FRECKLES
FREQUENT
FRESHMAN
FRICTION
FRIENDLY
FRONTIER
FUNCTION
GALACTIC
GENEROUS
GEODESIC
GERANIUM
GLORIOUS
GLOSSARY
GOLDFISH
GRACEFUL
GRADUATE
GRAPHICS
GRATUITY
GREENERY
GUARDIAN
GUIDANCE
HANDBAGS
HANDSOME
HARDWARE
HARDWOOD
HAYSTACK
HEADACHE
HEREDITY
HERITAGE
HILLSIDE

HISTORIC
HOLIDAYS
HOLOGRAM
HOMEWORK
HONEYBEE
HOSPITAL
HUMIDITY
HUMILITY
HYACINTH
HYDROGEN
HYSTERIA
ILLUSION
IMPOSING
INCIDENT
INCREASE
INDIRECT
INDUSTRY
INFINITE
INFINITY
INFORMAL
INFUSION
INNOCENT
INNOVATE
INSECURE
INSIGNIA
INSTANCE
INSTINCT
INSTRUCT
INSULATE
INTENDED
INTERCOM
INTEREST
INTERIOR
INTERNAL
INTERVAL
INTREPID
INTRIGUE
INVESTOR
IRRIGATE
IRRITATE
JEALOUSY
JETLINER
JUDGMENT
JUVENILE
KANGAROO
KEROSENE
KINDNESS
KNAPSACK
LACROSSE
LAMINATE
LANDLORD
LANDMARK
LANGUAGE
LANTERNS
LATITUDE
LAUGHTER
LAWRENCE
LEAPFROG
LEFTOVER
LEMONADE
LENGTHEN
LEVERAGE
LICORICE
LIFEBOAT
LIFETIME
LIGAMENT
LIKEWISE
LINOLEUM
LIPSTICK
LITERACY
LITERARY
LOCATION
LOGISTIC
LOOPHOLE
LOWLANDS
LUMINOUS
LUNCHEON
MACARONI
MACKEREL
MAGAZINE
MAGICIAN
MAINLAND
MAINTAIN
MAJESTIC
MAJORITY
MANDOLIN
MANEUVER
MANICURE
MANIFEST
MANIFOLD
MARATHON
MARGINAL
MARIGOLD
MARINADE
MARINATE
MARITIME
MARRIAGE
MATERIAL
MATTRESS
MAVERICK
MEANTIME
MECHANIC
MEDICINE
MEDIOCRE
MERCHANT
MERCIFUL
MERIDIAN
MERINGUE
METALLIC
METAPHOR
MIDNIGHT
MIDPOINT
MINIMIZE
MINSTREL
MISCHIEF
MISPLACE
MISSPELL
MOCCASIN
MODERATE
MODESTLY
MOISTURE
MOLASSES
MOLECULE
MOLEHILL
MONARCHY
MONOPOLY
MONOTONE
MONUMENT
MORTGAGE
MOSQUITO
MOTHBALL
MOTORCAR
MOTORIZE
MOUNTAIN
MOVEMENT
MULBERRY
MULTIPLE
MULTIPLY
MUSHROOM
MUSTACHE
NAMESAKE
NAUTILUS
NAVIGATE
NECKLACE
NEEDLESS
NEIGHBOR
NEWCOMER
NEWSCAST
NICKNAME
NINETEEN
NINETIES
NITROGEN
NOBILITY
NOBLEMAN
NOMINATE
NONSENSE
NORMALLY
NORTHERN
NOTARIZE
NOVEMBER
NUISANCE
OBEDIENT
OBLIVION
OBSOLETE
OBSTACLE
OCCASION
ODOMETER
OFFICIAL
OFFSHORE
OMISSION
OPERATOR
OPPONENT
OPTIMISM
ORDINARY
ORNAMENT
OUTBOUND
OUTBREAK
OUTDOORS
OUTFIELD
OVERCAST
OVERCOAT
OVERHAUL
OVERTIME
OVERTURE
OVERVIEW
PAMPHLET
PANORAMA
PARABOLA
PARADIGM
PARADISE
PARAFFIN
PARAKEET
PARALLAX
PARALLEL
PARKLAND
PARTICLE
PASSPORT
PASSWORD
PATIENCE
PAVEMENT
PAVILION
PEACOCKS
PEDESTAL
PEDICURE
PEGBOARD
PENDULUM
PENGUINS
PERCEIVE
PERIODIC
PERMEATE
PEROXIDE
PERSONAL
PERSUADE
PETULANT
PHARMACY
PHEASANT
PHONETIC
PHYSICAL
PINAFORE
PINNACLE
PINPOINT
PIONEERS
PIPELINE
PLATFORM
PLATINUM
PLEASANT
POPULACE
PORPOISE
PORRIDGE
PORTABLE
PORTRAIT
POSITION
POSSIBLE
POSTCARD
POSTPONE
PRACTICE
PRECINCT
PRECIOUS
PRESENCE
PRESSURE
PRESTIGE
PREVIOUS
PRIMROSE
PRIORITY
PRISTINE
PRODUCER
PROGRESS
PROPERLY
PROPERTY
PROSPECT
PROTOCOL
PROVINCE

PULLOVER
PUNCTUAL
PURCHASE
QUADRANT
QUANTIFY
QUANTITY
QUESTION
QUICKEST
QUOTIENT
RADIATOR
RAILROAD
RAINCOAT
RAINDROP
RAINFALL
RATIONAL
RAVENOUS
REACTION
REAPPEAR
REASSIGN
REASSURE
RECENTLY
RECKLESS
RECREATE
REDEFINE
REFERRAL
REGAINED
REGARDED
REGIONAL
REGISTER
REINDEER
RELATION
RELATIVE
RELAXING
RELEVANT
RELOCATE
REMEMBER
REMINDER
REPHRASE
REPLACED
REPORTER
REPUBLIC
RESEARCH
RESIDENT
RESOLVED
RESONANT
RESOURCE
RESPONSE
RESTLESS
RESTRAIN
RESTRICT
RESTROOM
REVIEWER
REVISION
RHAPSODY
RHETORIC
ROMANTIC
ROTATION
SAILBOAT
SAILFISH
SANCTITY
SANDWICH
SANITARY
SAPPHIRE
SATURATE
SAWTOOTH
SCABBARD
SCAFFOLD
SCENARIO
SCHEDULE
SCHOONER
SCISSORS
SCORPION
SCRABBLE
SCRAMBLE
SCRIBBLE
SCRUTINY
SCULPTOR
SEABOARD
SEACOAST
SEAHORSE
SEASHORE
SEASONAL
SECRETLY
SECURITY
SEDATION
SEDIMENT
SEMESTER
SENSIBLE
SENTENCE
SEPARATE
SEQUENCE
SERENADE
SHAMROCK
SHEPHERD
SHERBERT
SHILLING
SHIPMATE
SHIPMENT
SHIPYARD
SHOELACE
SHOPPING
SHOULDER
SHOWBOAT
SHOWERED
SHOWROOM
SHUTDOWN
SIDELINE
SIDESTEP
SIDEWALK
SIDEWAYS
SIMPLIFY
SIMULATE
SINGULAR
SLIGHTLY
SLIPPERY

SNOWBALL
SNOWSHOE
SOCIABLE
SOFTBALL
SOFTWARE
SOLIDIFY
SOLITARY
SOLITUDE
SOLSTICE
SOLUTION
SOMBRERO
SOMEBODY
SOMETIME
SONGBOOK
SORCERER
SOUTHERN
SOUVENIR
SPACIOUS
SPECIFIC

SPECTRUM
SPLENDID
SPLENDOR
SPOONFUL
SPORADIC
SPRINKLE
SQUADRON
SQUIRREL
STALLION
STAMPEDE
STANDARD
STANDOFF
STRAIGHT
STRAINER
STRATEGY
STRENGTH
STRUGGLE
STUBBORN
STUDIOUS
STUNNING
SUBMERGE
SUBTRACT
SUBURBAN
SUCCINCT
SUITABLE
SUITCASE
SUNLIGHT
SUNSHINE
SUPERIOR
SURPRISE
SURROUND
SUSPENSE
SWIMSUIT
SYMMETRY
SYMPATHY
SYMPHONY
SYNDROME
TACTICAL
TANGIBLE
TAPESTRY
TEASPOON
TEENAGER
TELECAST
TELEGRAM
TENDENCY
TERMINAL
TERRIBLE
TERRIFIC
TEXTBOOK
THEMATIC
THIRTEEN
THURSDAY
TOBOGGAN
TOGETHER
TOLERANT
TOLERATE
TOMORROW
TORTILLA
TRANQUIL
TRANSFER
TRANSMIT
TRAVERSE
TREASURE
TRESPASS
TRIANGLE
TRICYCLE
TRILLION
TROMBONE
TROPICAL
TURNOVER
TWEEZERS
ULTIMATE
UMBRELLA
UNBROKEN
UNCOMMON
UNDERCUT
UNDERDOG
UNDERSEA
UNDERWAY
UNICYCLE
UNIVERSE
UNLIKELY
UNSETTLE
UNSTABLE
UPCOMING
VACATION
VAGABOND
VALIDATE
VALUABLE
VANGUARD
VARIABLE
VARIANCE
VELOCITY
VERTEBRA
VERTICAL
VICINITY
VIGNETTE
VINEYARD
VIRTUOSO
VITALITY
WAITRESS
WARDROBE
WARRANTY
WHATEVER
WHEREVER
WINDFALL
WINDMILL
WIRELESS
WITHDRAW
WORKLOAD
WORKSHOP
WRANGLER
YOURSELF
YOUTHFUL
ZUCCHINI
ABSURDITY

ACCORDION
ACROBATIC
ADMIRABLE
ADMISSION
ADVANTAGE
ADVENTURE
ADVERSARY
ADVERTISE
AEROSPACE
AESTHETIC
AFFIDAVIT
AFFILIATE
AFTERMATH
AFTERNOON
ALABASTER
ALBATROSS
ALGORITHM
ALLIGATOR
AMBIGUOUS
AMBITIOUS
AMPERSAND
AMPHIBIAN
AMPLIFIER
AMPLITUDE
ANCESTRAL
ANCHOVIES
ANONYMOUS
ANTHOLOGY
ANTIQUITY
APARTMENT
APOLOGIZE
APPETIZER
APPLIANCE
AQUEDUCTS
ARBITRARY
ARGONAUTS
ARMSTRONG
ARROGANCE
ARROWHEAD
ARTICHOKE
ASPARAGUS
ASSISTANT
ASTROLOGY
ASTRONAUT
ASTRONOMY
ATTENTION
AUTHORITY
AUTOGRAPH
AUTOMATIC
AVAILABLE
BACKWARDS
BADMINTON
BALLERINA
BANDSTAND
BAROMETER
BINOCULAR
BIOGRAPHY
BIOSPHERE
BLEACHERS
BLINDFOLD
BLUEBERRY
BLUEGRASS
BLUEPRINT
BOOKSTORE
BOOMERANG
BOULEVARD
BREAKFAST
BRIEFCASE
BRILLIANT
BROADCAST
BULLDOZER
CAFETERIA
CALCULATE
CALIBRATE
CAPACITOR
CAPTIVATE
CARDBOARD
CARPENTER
CARTWHEEL
CASSEROLE
CENTIPEDE
CERTITUDE
CHALLENGE
CHAMPAGNE
CHARACTER
CHECKLIST
CHEMISTRY
CHILDHOOD
CHOCOLATE
CLASSROOM
CLEARANCE
CLOCKWISE
COMMITTEE
COMMUNITY
COMPANION
COMPETENT
COMPONENT
CONCIERGE
CONDITION
CONFIDENT
CONFUSING
CONNECTED
CONSCIOUS
CONSONANT
CONSTRUCT
CONTAINER
CONTENDER
CONTINENT
COROLLARY
CRANBERRY
CRITICISM
CROCODILE
DANDELION
DANGEROUS
DEDICATED
DEFICIENT
DELICIOUS
DEMOCRACY
DEPARTURE
DESPERATE
DETECTIVE
DETERGENT
DETERMINE
DIAGNOSIS
DIFFERENT
DIFFICULT
DIGNIFIED
DIMENSION
DIRECTION
DISAPPEAR
DISCOVERY
DISPENSER
DOCTORATE
DORMITORY
DUPLICATE
EARTHWORM
ECCENTRIC
EDITORIAL
EDUCATION
EMERGENCY
EMOTIONAL
ENCHANTED
ENCOUNTER
ENDURANCE
ENTERTAIN
EQUIPMENT
ESTABLISH
ESTIMATES
ETIQUETTE
EVAPORATE
EVERGREEN
EVERYBODY
EXCELLENT
EXCLUSIVE
EXECUTIVE
EXHAUSTED
EXISTENCE
EXPANSION
EXPENSIVE
EXPERTISE
EXTENSION
FANTASTIC
FINGERTIP
FLOWERPOT
FLUCTUATE
FORBIDDEN
FORESIGHT
FORGETFUL
FORTUNATE
FOUNTAINS
FRAMEWORK
FRANCHISE
FREQUENCY
FURNITURE
GATHERING
GENERATOR
GENTLEMAN
GEOMETRIC
GOLDENROD
GRATITUDE
GREATBEND
GREYHOUND
GROCERIES
GUIDELINE
GYMNASIUM
GYMNASTIC
HAILSTORM
HAMBURGER
HANDSHAKE
HAPPENING
HAPPINESS
HARMONICA
HEADLIGHT
HEADPHONE
HEARTBEAT
HIBERNATE
HIERARCHY
HIGHLANDS
HIGHLIGHT
HISTORIAN
HONEYCOMB
HONEYMOON
HOROSCOPE
HORSEBACK
HORSESHOE
HOURGLASS
HOUSEHOLD
HOUSEWORK
HURRICANE
HYDRAULIC
HYPNOTIZE
IDENTICAL
IMAGINARY
IMMEDIATE
IMPATIENT
IMPLEMENT
IMPORTANT
IMPROMPTU
IMPROVISE
IMPULSIVE
INAUGURAL
INCENTIVE
INCLUSION
INCORRECT
INFLUENCE
INGENIOUS
INGENUITY
INSERTION
INSURANCE
INTEGRITY
INTELLECT
INTERCEPT
INTERFERE
INTERLUDE
INTERPRET
INTERRUPT
INTERVIEW
INTRICATE
INTRODUCE
INVENTION
INVENTIVE
INVISIBLE
IRREGULAR
JELLYFISH
KNOWLEDGE
LABYRINTH
LANDOWNER
LANDSCAPE
LAZYBONES
LEGENDARY
LEISURELY

LIBRARIAN
LIFESTYLE
LIGHTNING
LIMELIGHT
LIMESTONE
LIMOUSINE
LIVESTOCK
LOCKSMITH
LONGEVITY
LUMINANCE
LUXURIOUS
MACHINERY
MAGNITUDE
MANHATTAN
MARGARINE
MARKETING
MARMALADE
MARVELOUS
MCPHERSON
MEANWHILE
MEDALLION
MENAGERIE
MESSENGER
METEORITE
MEZZANINE
MICROFILM
MICROWAVE
MIDSUMMER
MILLIPEDE
MILLSTONE
MINCEMEAT
MINIATURE
MISTLETOE
MODERNIZE
MONOLOGUE
MOONLIGHT
MULTIPLEX
MUNICIPAL
MYTHOLOGY
NECESSARY
NECESSITY
NEGOTIATE
NEWSPAPER
NIGHTFALL
NOCTURNAL
NONLINEAR
NORTHEAST
NORTHWEST
NOSTALGIA
NUMERATOR
NUTRITION
OBEDIENCE
OBLIGATED
OBSESSION
OCCUPANCY
OLFACTORY
OPTOMETRY
ORCHESTRA
OVERBOARD
OVERWHELM
PALLADIUM
PANTOMIME
PAPERWORK
PARACHUTE
PARAGRAPH
PARAMETER
PARCHMENT
PARTITION
PARTRIDGE
PASSENGER
PATCHWORK
PEACETIME
PENINSULA
PEPPERONI
PERENNIAL
PERISCOPE
PERMANENT
PERPETUAL
PERSEVERE
PETROLEUM
PHENOMENA
PHYSICIAN
PINEAPPLE
PISTACHIO
PLENTIFUL
PLUTONIUM
PNEUMATIC
POLLUTION
POLYESTER
PORCELAIN
PORCUPINE
POTASSIUM
POTENTIAL
POTPOURRI
PRECEDENT
PREEMPTED
PRESENTLY
PRESIDENT
PRETENDER
PREVALENT
PRIMARILY
PRIMITIVE
PRINCETON
PRINCIPAL
PRIVILEGE
PROCESSED
PROFESSOR
PROJECTOR
PROMENADE
PROMOTION
PROOFREAD
PROVISION
PROXIMITY
PUBLISHER
PUPPETEER
QUADRUPLE
QUALIFIED
QUALITIES
QUARTERLY
QUICKSAND
QUOTATION
RACETRACK
RASPBERRY
REARRANGE
REASONING
RECEPTION
RECIPIENT
RECOGNIZE
RECOMMEND
RECONCILE
RECORDING
RECTANGLE
RECYCLING
REDUNDANT
REFERENCE
REFLECTOR
REGARDING
REGULATOR
REHEARSAL
REINFORCE
REITERATE
REJECTION
RELEVANCE
RELUCTANT
REMOVABLE
RENEWABLE
REPRESENT
REQUISITE
RESEMBLES
RESERVOIR
RESIDENCE
RESILIENT
RESISTANT
RESONANCE
RESPECTED
RESTRAINT
RIVERVIEW
ROADBLOCK
SADDLEBAG
SAFEGUARD
SAGEBRUSH
SANDPAPER
SATELLITE
SATISFIES
SATURATED
SAXOPHONE
SCAPEGOAT
SCARECROW
SCORECARD
SCRIBBLER
SCRIMMAGE
SCULPTURE
SECESSION
SECLUSION
SECRETARY
SECTIONAL
SEEDLINGS
SEEMINGLY
SELECTION
SEMANTICS
SEMICOLON
SENSATION
SENSITIVE
SENTIMENT
SERIOUSLY
SHEEPSKIN
SHELLFISH
SHIPBOARD
SHIPSHAPE
SHIPWRECK
SIDEBURNS
SIGNATURE
SIMILARLY
SIMULATED
SINCERELY
SITUATION
SKETCHPAD
SLAPSTICK
SNOWFLAKE
SOCIALIZE
SOCIOLOGY
SOLICITOR
SOLILOQUY
SOLITAIRE
SOMETHING
SOURDOUGH
SOVEREIGN
SPACESHIP
SPAGHETTI
SPEARMINT
SPECTATOR
SPOKESMAN
SPOTLIGHT
SPRINKLER
STABILITY
STAINLESS
STALEMATE
STARLIGHT
STATEMENT
STEAMBOAT
STOCKINGS
STOPWATCH
STOREROOM
STRATEGIC
STREETCAR
STRUCTURE
STYROFOAM
SUBMARINE
SUBSCRIBE
SUBSTANCE
SUNFLOWER
SUPERVISE
SURRENDER
SYMBOLISM
TANGERINE
TECHNICAL
TECHNIQUE
TELEGRAPH
TELEPHONE
TELESCOPE
TEMPORARY
TENTATIVE
TERRITORY
TESTIMONY
THEREFORE
THESAURUS
THRESHOLD
TIMETABLE
TOOTHPICK
TOUCHDOWN
TRADEMARK
TRADITION
TRANSFORM
TRANSLATE
TRANSPORT
TURQUOISE
UNANIMOUS
UNCERTAIN
UNDECIDED
UNDERLINE
UNDERPASS
UNIVERSAL
UNWILLING
UTILITIES
VALENTINE
VARIATION
VEGETABLE
VENERABLE
VENTILATE
VERSATILE
VESTIBULE
VICTORIAN
VIDEOTAPE
VOLUNTARY
VOLUNTEER
WALLPAPER
WAREHOUSE
WEDNESDAY
WHIRLPOOL
WHOLESALE
WHOLESOME
WONDERFUL
WORKHORSE
WORLDWIDE
WRESTLING
YARDSTICK
YESTERDAY
YOUNGSTER

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 14, 2004

♦ ♦ ♦

Instant Game No. 473 "Cash Connection"

1.0 Name and Style of Game.

A. The name of Instant Game No. 473 is "CASH CONNECTION". The play style is "key number match with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 473 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 473.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59 and 60.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 473 - 1.2D

PLAY SYMBOL	CAPTION
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
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41	
42	
43	
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57	
58	
59	
60	

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 473 - 1.2E

CODE	PRIZE
THR	$3.00
SIX	$6.00
NIN	$9.00
TWL	$12.00
EHT	$18.00
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 boxed four (4) digit Security Number 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, $6.00, $9.00, $12.00, $18.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $100 or $200.

I. High-Tier Prize- A prize of $30,000.

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 (473), 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: 473-0000001-000.

L. Pack - A pack of "CASH CONNECTION" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 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 "CASH CONNECTION" Instant Game No. 473 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 "CASH CONNECTION" Instant Game is determined once the latex on the ticket is scratched off to expose 14 (fourteen) Play Symbols. A player must reveals all 14 (fourteen) YOUR

NUMBERS play symbols, then find the corresponding YOUR NUMBERS play symbols on the CASH BOX. If a player finds three (3) or more CASH BOX NUMBERS that are touching (vertical, horizontal or diagonal line), the player wins prize indicated in PRIZE LEGEND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 14 (fourteen) 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 14 (fourteen) 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 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 14 (fourteen) 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 Your Number play symbols on a ticket.

C. No duplicate play symbols in the Cash Box play area on a ticket.

D. There will be a minimum of 12 matched Your Numbers on all tickets.

E. The combination of matched Cash Box numbers will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH CONNECTION" Instant Game prize of $3.00, $6.00, $9.00, $12.00, $18.00, $20.00, $40.00, $100 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 $40.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH CONNECTION" Instant Game prize of $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH CONNECTION" 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 Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH CONNECTION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH CONNECTION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 473. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 473 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	624,000	9.62
$6	432,000	13.89
$9	96,000	62.50
$12	96,000	62.50
$18	72,000	83.33
$20	48,000	125.00
$40	24,000	250.00
$100	12,000	500.00
$200	3,500	1,714.29
$30,000	12	500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.26. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 473 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. 473, 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-200404495
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 12, 2004

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Instant Game No. 476 "Sapphire Blue 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 476 is "SAPPHIRE BLUE 7'S". The play style is "key symbol match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 476 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 476.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, , 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $1,000 or $25,000. The possible blue play symbols are: 1, 2, 3, 4, 5, 6,, 8, 9, 10, 11, 12, 13, 14 or 15.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 476 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7 (black)	WIN
7 (blue)	DBL
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 476 - 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 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (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 (476), 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: 476-0000001-000.

L. Pack - A pack of "SAPPHIRE BLUE 7'S" Instant Game tickets contains 250 tickets, 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 on the next page; etc.; and tickets 248 and 249 will be on the last page. Please note the books will be in a 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 "SAPPHIRE BLUE 7'S" Instant Game No. 476 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 "SAPPHIRE BLUE 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 32 (thirty-two) Play Symbols. If a player reveals a black "7" play symbol the player will win prize indicated. If a player reveals a blue "7" play symbol the player will win double the prize indicated for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 32 (thirty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 32 thirty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 (thirty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 32 (thirty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning play symbols on a ticket regardless of color.

D. Every ticket will have a minimum of three and maximum of seven blue play symbols to prevent pick out.

E. The black 7 (auto win) play symbol and blue 7 (doubler) play symbol will only appear as dictated by the prize structure.

F. The blue 7 (doubler) play symbol may only appear once on a ticket.

G. All prize symbols and their captions will only be imaged in black.

J. Non-winning play symbols and captions will appear in both black and blue imaging.

K. Winning play symbols will only appear in the color designated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SAPPHIRE BLUE 7'S" 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 Section 2.3.C of these Game Procedures.

B. To claim a "SAPPHIRE BLUE 7'S" 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 "SAPPHIRE BLUE 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; 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 Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SAPPHIRE BLUE 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SAPPHIRE BLUE 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game No. 476. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 476 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,008,000	8.93
$4	504,000	17.86
$5	144,000	62.50
$8	36,000	250.00
$10	72,000	125.00
$12	54,000	166.67
$20	36,000	250.00
$50	36,000	250.00
$200	13,350	674.16
$1,000	225	40,000.00
$25,000	9	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 476 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. 476, 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-200404496
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 12, 2004

♦ ♦ ♦

Instant Game No. 487 "$300,000 Casino Thrills"

1.0 Name and Style of Game.

A. The name of Instant Game No. 487 is "$300,000 CASINO THRILLS". The play style in the game BLACKJACK is "yours beats theirs". The play style in the game SLOTS is "key symbol match". The play style in the game ROULETTE is "key number match". The play style in the game "7-11" is "add-up"

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 487 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 487.

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, $3.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $50.00, $90.00, $100, $200, $250, $500, $1,000, $2,000, $3,000, $5,000, $15,000, $30,000, $300,000, CHERRIES SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, HORSESHOE SYMBOL, GOLD BAR SYMBOL, 7 SYMBOL, CROWN SYMBOL, 1 DICE SYMBOL, 2 DICE SYMBOL, 3 DICE SYMBOL, 4 DICE SYMBOL, 5 DICE SYMBOL and 6 DICE SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 487 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$30.00	THIRTY
$50.00	FIFTY
$90.00	NINTY
$100	ONE HUND
$200	TWO HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$2,000	TWO THOU
$3,000	THREE THOU
$5,000	FIV THOU
$15,000	15 THOU
$30,000	30 THOU

$300,000	300 THOU
1 DICE SYMBOL	ONE
2 DICE SYMBOL	TWO
3 DICE SYMBOL	THR
4 DICE SYMBOL	FOR
5 DICE SYMBOL	FIV
6 DICE SYMBOL	SIX
CHERRIES SYMBOL	CHR
MELON SYMBOL	MEL
BANANA SYMBOL	BNA
STAR SYMBOL	STAR
LEMON SYMBOL	LEM
HORSESHOE SYMBOL	HSH
GOLD BAR SYMBOL	BAR
7 SYMBOL	SVN
CROWN SYMBOL	CRN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 487 - 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 boxed four (4) digit security number 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 $30.00, $50.00, $100 or $500.

I. High-Tier Prize- A prize of $1,000, $30,000, or $300,000.

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 (487), 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: 487-0000001-000.

L. Pack - A pack of "$300,000 CASINO THRILLS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 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 "$300,000 CASINO THRILLS" Instant Game No. 487 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 "$300,000 CASINO THRILLS" Instant Game is determined once the latex on the ticket is scratched off to expose 63 (sixty-three) play symbols. In Game BLACKJACK, if YOUR HAND play symbols beats the DEALER'S HAND play symbols within the same game, win prize indicated for that game. In the game SLOTS, if a player reveals three (3) identical play symbols in the same spin, win prize indicated in the corresponding prize legend. In the game ROULETTE, if a player matches YOUR NUMBER to any WHEEL NUMBER in the same wheel, win prize indicated for that game. In the game "7-11" if the dice total adds up to 7 or 11 within one ROLL, the player will win prize corresponding for that 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 63(sixty-three) 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 63 (sixty-three) 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 63 (sixty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 63(sixty-three) 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. Although not all prize symbols may be won in all locations, all may appear in non-winning prize locations.

C. Game Blackjack: No ties between Your Hand and the Dealer's Hand.

D. Game Blackjack: No duplicate non-winning Your Hand play symbols.

E. Game Blackjack: No duplicate non-winning prize symbols.

F. Game Blackjack: No identical games on a ticket (i.e. 17 and 18 in Game 1 and 17 and 18 in Game 2, 3 or 4).

G. Game Slots: No duplicate non-winning spins in any order.

H. Game Slots: No 3 like non-winning symbols in a vertical or diagonal line.

I. Game Slots: Non-winning Slots tickets will contain no more than 4 of the same play symbol.

J. Game Roulette: No duplicate non-winning prize symbols between the (three) 3 wheels.

K. Game Roulette No duplicate non-winning Wheel Numbers play symbols within a wheel.

L. Game Roulette No duplicate Your Number play symbols.

M. Game Roulette No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

N Game Roulette on-winning prize symbols will never be the same as the winning prize symbol(s).

O. Game 7-11: No duplicate non-winning prize symbols.

Q. Game 7-11:No duplicate non-winning rolls in any order.

2.3 Procedure for Claiming Prizes.

A. To claim a "$300,000 CASINO THRILLS" Instant Game prize of $10.00, $20.00, $30.00, $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 "$300,000 CASINO THRILLS" Instant Game prize of $1,000, $30,000 or $300,000, 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 "$300,000 CASINO THRILLS" 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 Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. 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.F 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 "$300,000 CASINO THRILLS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$300,000 CASINO THRILLS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 473. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 487 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,680,000	3.00
$20	268,800	18.75
$30	84,000	60.00
$50	84,000	60.00
$100	27,720	181.82
$500	3,570	1,411.76
$1,000	72	70,000.00
$30,000	8	630,000.00
$300,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 2.35. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 473 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. 473, 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-200404497
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 12, 2004

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Instant Game No. 490 "Wild 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 490 is "WILD 8'S". The play style is "row/column/diagonal with bonus"

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 490 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 490.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2, 3, 4, 5, 6, 7, 8, 9, $1.00, $2.00, $3.00, $8.00, $16.00 $24.00, $100, $800, 2 TIMES SYMBOL, 3 TIMES SYMBOL and NO BONUS SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 490 - 1.2D

PLAY SYMBOL	CAPTION
2	
3	
4	
5	
6	
7	
8	
9	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$8.00	EIGHT$
$16.00	SIXTN
$24.00	TWY FOR
$100	ONE HUND
$800	EGT HUND
2 TIMES SYMBOL	AMOUNT
3 TIMES SYMBOL	AMOUNT
NO BONUS	AMOUNT

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 490 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
SIX	$6.00
EGT	$8.00
SXN	$16.00
TFR	$24.00

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 boxed four (4) digit Security Number 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, $6.00, $8.00, $16.00 or $24.00.

H. Mid-Tier Prize - A prize of $48.00 or $100.

I. High-Tier Prize- A prize of $800.

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 (490), 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: 490-0000001-000.

L. Pack - A pack of "WILD 8'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of

five (5). Tickets 000 and 004 will be on the top page; tickets 005 and 009 on the next page; etc.; and tickets 245 and 249 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and backs are displayed in 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 "WILD 8'S" Instant Game No. 490 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 "WILD 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player reveals three (3) "8" play symbols in any row, column or diagonal the player will win prize indicated in PRIZE BOX. If a player reveals a "2 TIMES" play symbol in the BONUS BOX play area the player will win double the PRIZE amount indicated. If a player reveals a "3 TIMES" play symbol in the BONUS BOX play area the player will win triple the PRIZE amount 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 11 (eleven) 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 11 (eleven) 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 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) 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 ticket will contain three (3) or more of a kind other than the 8 symbol.

B. Every ticket will contain at least four 8's.

C. The 2 TIMES and 3 TIMES bonus symbols will only appear on intended winners as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 8'S" Instant Game prize of $1.00, $2.00, $3.00, $6.00, $8.00, $16.00, $24.00, $48.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 $48.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the

procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD 8'S" Instant Game prize of $800, 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 "WILD 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; 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 Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WILD 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WILD 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 490. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 490 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,512,000	10.00
$2	967,680	15.63
$3	423,360	35.71
$6	120,960	125.00
$8	30,240	500.00
$16	30,240	500.00
$24	60,480	250.00
$48	24,066	628.27
$100	1,890	8,000.00
$800	126	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.77. 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 Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 490 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. 490, 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-200404498
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 12, 2004

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Public Utility Commission of Texas

Notice of Application for an Amendment to a Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 9, 2004, for an amendment to a certificate of operating authority to reflect a change in service area, pursuant to Public Utility Regulatory Act (PURA) §§54.101 - 54.105.

Docket Title and Number: Application of Panhandle Telecommunication Systems, Incorporated for an Amendment to its Certificate of Operating Authority, Docket Number 29933 before the Public Utility Commission of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 28, 2004. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29933.

TRD-200404504
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2004

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Notice of Contract Award

The Public Utility Commission of Texas (commission) announces that it has entered into a major consulting services contract with J. P. Morgan Securities Incorporated, a Delaware Corporation with a principal place of business at 270 Park Avenue, 48th Floor, New York, NY 10017. This notice is being published to ensure the same public notice under the provisions of the Texas Government Code Annotated §2254.030 as that required for major contracts for "consulting services" as that term is defined under the provisions of Texas Government Code Annotated §2254.002(2).

Under Public Utility Regulatory Act, Texas Utilities Code Annotated §39.262(h)(3), the commission has a statutory duty to quantify the amount of stranded costs for electric utility companies. The purpose of Contract Number 473-04-6518 is to assist the commission by acquiring the services of a valuation advisor related to the determination of a control premium for valuation of electric utility stranded costs for Texas Genco. The contract amount for services to be performed by J. P. Morgan Securities Incorporated is six million dollars ($6,000,000). This amount is all-inclusive, including among other cost items all expenses relating to travel and testimony.

The initial contract performance period begins June 23, 2004 and expires on August 31, 2004. The commission shall have the option to renew the contract at the end of the initial term for three additional one-year terms.

The commission's contact person relating to this contract is Robert Saathoff, CPA, Chief Fiscal Officer, who may be reached at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936- 7065. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-298.

TRD-200404505
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2004

♦ ♦ ♦

Notice of Petition of AEP Texas Central Company for Annual Billing Authorization and for Revision of EMC Tariff

Notice is given to the public of AEP Texas Central Company's petition filed with the Public Utility Commission of Texas (commission) on July 7, 2004 for annual billing authorization and for revision to its "Rider EMC" tariff pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated §39.252 (Vernon 1998 & Supplement 2004) (PURA).

Docket Title and Number: Petition of AEP Texas Central Company for Annual Billing Authorization and for Revision of EMC Tariff, Docket Number 29926.

The Application: AEP Texas Central Company (TCC) filed a petition for Annual Billing Authorization and for Revision of its "Rider EMC" tariff. TCC stated that the petition is filed as a result of a stranded costs reimbursement agreement (Agreement) reached by TCC and San Patricio Electric Cooperative, Incorporated (SPEC) to address recovery of stranded costs from customers who switch from TCC to SPEC within the overlapping service areas of TCC and SPEC.

Persons wishing to comment on this application 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. 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 29926.

TRD-200404515
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2004

♦ ♦ ♦

Notice of Petition Requesting Relief of Provider of Last Resort (POLR) Designation Pursuant to PURA §54.302

Notice is given to the public of SBC Texas' (SBC) petition filed with the Public Utility Commission of Texas (commission) on March 16, 2004, requesting relief of its designation as the provider of last resort in certain specified geographic areas which SBC asserts are currently served exclusively by Advantex Communications (Advantex) in the Dallas/Ft. Worth metropolitan area. This petition is filed pursuant to Public Utility Regulatory Act (PURA) §54.302.

Docket Style and Number: Petition of Southwestern Bell Telephone, L.P. dba SBC Texas for an Order Relieving it of its Designation as the Provider of Last Resort in Area Served Exclusively by Advantex Communications. Docket Number 29472.

The Application: SBC is requesting relief of its designation as the provider of last resort in certain specified geographic areas which SBC asserts are currently served exclusively by Advantex in the Dallas/Ft. Worth metropolitan area. SBC is the "provider of last resort" throughout much of the Dallas/Ft. Worth Metroplex. PURA §54.301(2) defines "provider of last resort" as a certificated telecommunications utility that must offer basic local telecommunications service throughout a defined geographic area.

Currently, if you live in one of these areas where SBC is designated as the provider of last resort, SBC is legally obligated to provide telephone service to you if you request service from SBC, even if SBC currently does not have the wires in place to serve you. SBC's petition asserts that, in numerous residential subdivisions in or near McKinney, Allen, Frisco, Aubrey, and Prosper, SBC is the "provider of last resort" but does not have adequate wires in place to serve the residents. Instead, according to the petition, these subdivisions currently are being served by Advantex and potentially other telephone providers that do have wires in place to provide telephone service to the residents. SBC has requested to be relieved of its "provider of last resort" obligation and to transfer its "provider of last resort" obligation to Advantex in each of these subdivisions. If SBC's request is granted, Advantex would become the provider of last resort in these subdivisions and SBC would be permitted, but not required, to serve residents in these subdivisions. A listing of the subdivisions affected by SBC's request can be found on pages 9 - 11 of the document located on the following website: http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/29472_1_430865.PDF.

Persons wishing to comment or intervene in the above-referenced proceeding should contact the Public Utility Commission of Texas, no later than July 29, 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 Project Number 29472.

TRD-200404503
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2004

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Texas Residential Construction Commission

Notice of Applicant for Registration as Arbitrator

The commission adopted rules regarding the registration and certification of arbitrators at 10 TAC §§318.20-318.32. These rules were adopted under new Chapter 417, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that the commission establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator and that the commission maintain a list of certified arbitrators and make that list available to the public. The commission rules can be found on the commission's website at www.trcc.state.tx.us

10 TAC §318.22 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice.

Pursuant to 10 TAC §318.22 the commission hereby notices the application of:

Raymond A. Risk, Jr., 602 W. 13th St., Austin, TX 78701-1705. Mr. Risk has asserted that he meets the requirements of certification and that he has at least five years of experience conducting arbitrations between homeowners and builders involving construction defects.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200404466
Susan Durso
General Counsel
Texas Residential Construction Commission
Filed: July 9, 2004

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Notice of Applicant for Registration as Arbitrator

The commission adopted rules regarding the registration and certification of arbitrators at 10 TAC §§318.20-318.32. These rules were adopted under new Chapter 417, Property Code (Act effective Sept. 1, 2003, 78th Leg., R.S., ch. 458, §1.01), which provides that the commission establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator and that the commission maintain a list of certified arbitrators and make that list available to the public. The commission rules can be found on the commission's website at www.trcc.state.tx.us

10 TAC §318.22 requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice.

Pursuant to 10 TAC §318.22 the commission hereby notices the application of:

Michael W. Johnston, 307 W. 7th Street, Fort Worth, Texas 76102. Mr. Johnston has asserted that he meets the requirements of certification and that he has at least five years of experience conducting arbitrations between homeowners and builders involving construction defects.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200404467
Susan Durso
General Counsel
Texas Residential Construction Commission
Filed: July 9, 2004

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Office of Rural Community Affairs

Notice for Request for Proposal to Procure the Services of a Qualified Independent Consultant to Develop and Produce an Educational and Informational CD ROM

Introduction

The Office of Rural Community Affairs (Office) is seeking to procure the services of a qualified independent consultant to develop and produce an educational and informational CD Rom that will:

Educate community leaders on how to successfully recruit primary care professionals to rural communities in Texas

Educate community leaders on successful and innovative retention strategies

Inform community leaders about the many services and assistance programs that the Office provides to rural communities

Provide primary care professionals with basic information on practice management and starting a new practice

Educate primary care professionals about the many opportunities that exist for those that are willing to practice in rural Texas communities

Inform primary care professionals about the many services and financial assistance programs that the Office and other state and federal agencies offer to rural practitioners

Encourage and influence primary care professionals to practice in rural Texas; and

Position the Office as one of the primary resources for rural healthcare recruitment and rural community assistance in Texas.

Authority

The Office of Rural Community Affairs is the federally designated Texas State Office of Rural Health by the Health Resources and Services Administration's (HRSA) Office of Rural Health Policy (ORHP). The Office of Rural Community Affairs administers the Texas Rural Hospital Flexibility (Flex) Program. The authority for this program is §487.051 (8-9), Texas Government Code. This RFP is issued pursuant to the provisions of the Professional and Consulting Services Act, Texas Government Code, §2254.021 et seq., VTCA.

Recruitment CD ROM Purpose

The Office is one of the state's primary resources for information, guidance, and placement of healthcare professionals in rural Texas. As such, the Office seeks to develop an educational tool (CD Rom) that will facilitate successful recruitment interactions between rural communities and interested primary care professionals. The primary purpose and goals for the educational tool are:

To educate and inform rural community leaders in how to use their community's unique qualities to attract qualified primary care providers

To educate and inform rural communities on basic marketing techniques and resources that will assist them in reaching and recruiting qualified primary care professionals

To educate rural communities on how to use financial incentives provided by the Office and other state and federal agencies or initiatives to bolster their recruitment and retention efforts

To educate rural community leaders on how to think like recruiters, to go the extra mile to recruit families - not just employees - and to lay a strong foundation that will foster long term working relationships; AND

To influence and encourage primary care professionals to practice in rural Texas communities

To educate primary care professionals about the distinct advantages to choosing to practice in rural Texas (i.e., quality of life, community status, better patient relationships etc.)

To educate primary care professionals about placement and financial assistance provided through the Office and other state and federal agencies or initiatives

To guide and instruct primary care professionals on the basics of contract negotiations

To guide and instruct primary care professionals on the basics of starting a new practice

To guide and instruct primary care professionals on choosing the "right" community and practice opportunity that meets their unique needs

To serve as a marketing vehicle and promotional tool for the Office and the grant programs that it manages

To position the Office as one of the primary resources for recruiting primary care professionals in rural Texas via widespread distribution of the CD Rom; and

To accomplish and deliver the above-noted functions in a reproducible CD Rom format

Recruitment CD Rom Contents

The Recruitment CD Rom will:

Contain a "dual track" program that incorporates two independent learning environments

A "Community Track" that provides guidance, in-depth information, and education on innovative recruitment and retention strategies for rural communities; and

A "Professional Track" that provides guidance, in-depth information, and education on establishing practices and careers in rural Texas communities

Incorporate exercises and scoring mechanisms for both tracks that enhance the learning experience and functionality of the CD Rom (i.e., temporarily save user information, gauge user knowledge on specific topics, generate reports and feedback on specific topics, print samples and other learning documents, etc.)

Incorporate rich text, multi-media mechanisms, and intuitive navigation tools to create a multi-sensory learning experience

Recruitment CD Rom Technical Specifications

Be developed for PC compatibility based on current technology, i.e.,

200 MHz Intel Pentium Processor or greater

Windows 95, 98, ME, 2000, XP

32 MB RAM or greater

16-bit color monitor

800x600 monitor resolution (or greater)

16-bit sound card

Have a mechanism for protecting the CD Rom content against unauthorized editing and other manipulation; and

Incorporate the capability to allow Internet users to download the content - or portions of the content - via the Internet

Consultant Qualification

Consultants must have demonstrable, current experience (at least five years) in designing and producing healthcare-related educational electronic media products.

The consultant may identify, subcontract, and manage content development with external industry experts in the following areas:

Primary care physician recruitment, contract negotiation, and new practice management

General non-physician primary care professional recruitment

Best practices in rural community and hospital-based primary care recruitment and retention methods

Availability of Funds

The Office may commit up to $43,552.00 through the Flex Program to support the development and production of the Recruitment CD Rom.

RFP Deadline

Proposals must be post-marked on or before August 6, 2004 AND received by the Office by August 13, 2004 to be considered responsive. Proposals submitted electronically or by facsimile transmission will not be accepted. If a proposal is hand-delivered directly to the Office, request a receipt at the time of delivery to verify that it is received on or before the due date.

The RFP is available at www.orca.state.tx.us (under the "What's New" section). Address questions and submit the complete, signed proposal to:

Office of Rural Community Affairs

1700 North Congress, Suite 220

Austin, Texas 78701

512-936-6701

TRD-200404463
Robert J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: July 8, 2004

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Request for Proposal (RFP) - Internal Auditing Services

Purpose and Scope

The Office of Rural Community Affairs (ORCA), under authority of the Texas Government Code, Section 2156, is soliciting proposals from qualified entities to provide internal auditing services. These services are required to comply with the Texas Internal Auditing Act, Chapter 2102, Texas Government Code, which also details internal auditing responsibilities. ORCA requires services that represent the best combination of price and quality.

The audit work shall be accomplished in accordance with Chapter 2102 of the Texas Government Code. Section 2102.007 describes the duties of Internal Auditor as follows:

(a) The internal auditor shall:

(1) report directly to the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board;

(2) develop an annual audit plan;

(3) conduct audits as specified in the audit plan and document deviations;

(4) prepare audit reports;

(5) conduct quality assurance reviews in accordance with professional standards as provided by Section 2102.011 and periodically take part in a comprehensive external peer review; and

(6) conduct economy and efficiency audits and program results audits as directed by the state agency's governing board or the administrator of the state agency if the state agency does not have a governing board.

(b) The program of internal auditing conducted by a state agency must provide for the auditor to:

(1) have access to the administrator; and

(2) be free of all operational and management responsibilities that would impair the auditor's ability to review independently all aspects of the state agency's operation.

Services will include developing an internal audit work schedule based on a written risk assessment of major systems and controls of ORCA for FY 2004; a proposed internal audit plan for FY 2005; follow up reviews on the status of implementation of internal audit recommendations made during FY 2003; preparation of the Annual Internal Audit Report for FY 2004; and, auditing services for selected key agency program components and grant recipients based on the FY 2004 assessment as needed. In addition to written reports, periodic oral reports to the ORCA will be required. It is anticipated that most of the required audit work can be accomplished at the Stephen F. Austin Building location in Austin, Texas.

Agency Overview

ORCA is a State of Texas agency and is intended to function independently within its statutory authority to protect the integrity of the State of Texas and to serve the long-term public interest. Within the framework of state law and appropriations, ORCA is responsible for establishing policy and for the effective administration of the agency through its Director and Executive Committee.

ORCA serves as a focal agency for the state's community development, economic development, and healthcare programs that target the rural areas of Texas. The agency administers grant-related programs and services focusing on Community Development and Rural Health.

Selection Criteria

Proposals will be evaluated using the criteria and scoring outlined below. The Proposer may be requested to give a formal presentation to the Executive Committee. Final selection will be made by the agency's Executive Committee.

Proposer Experience and Knowledge 35%

Quality of Management Component 30%

Quality of Task/Activity Plan 35%

Proposer Qualifications

For a proposal to be considered valid, it must contain affirmations that the Proposer meets all requirements of the Texas Internal Auditing Act and the State Auditor, and that the services will be provided by a Certified Public accountant with at least three (3) years of auditing experience, or by a Certified Internal Auditor with at least three (3) years experience. The Proposer must also affirm that the services will be provided in conformance with the Texas Internal Auditing Act.

Timeline

Activity Date

RFP Available 07/23/2004

Submission of Written Proposal to ORCA By 08/20/2004 5:00 PM

Interview of Highest Rated Proposer(s) By 09/06/2004

Selection of Internal Auditor By 09/20/2004

Contract Start Date 12/01/2004

Project Completion Date 02/01/2005

Request for Proposal Availability

The RFP will be posted to the ORCA website on or about July 23, 2004. It may also be available on or about July 23rd by contacting: Rebecca Valenzuela, Purchasing Services, Office of Rural Community Affairs, 1700 N. Congress, Suite 220, Austin, Texas 78711. Phone: (512) 936-6701. Email: rvalenzuela@orca.state.tx.us

TRD-200404532
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: July 14, 2004

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Texas Department of Transportation

Public Notice - 2004 Program Call Border Colonia Access Program

In accordance with 43 TAC §15.103, the Texas Department of Transportation (department) issues this 2004 Program Call for proposed projects to be considered for funding under the department's Border Colonia Access Program. Government Code, Chapter 1403, requires the Texas Public Finance Authority, in accordance with requests from the Office of the Governor, to issue general obligation bonds and notes in an aggregate amount not to exceed $175 million, and as directed by the department, distribute the proceeds to counties to provide financial assistance for colonia access roadway projects to serve border colonias. Chapter 1403 requires the Texas Transportation Commission (commission) to establish a program to administer the use of the proceeds of the bonds and notes.

The commission established the Border Colonia Access Program in 43 TAC §§15.100-15.106. Eligible project costs under the program are the cost of constructing, administering, or providing drainage for a project, including the cost of leasing equipment used substantially in connection with a project, or acquiring materials used solely in connection with a project. Eligible project costs include the cost of:

(1) paving unpaved colonia roads;

(2) repaving or repairing paved colonia roads;

(3) acquiring materials or leasing equipment for colonia roads; and

(4) providing drainage for a colonia road.

For a project to be eligible for consideration for the program, it must be located in an eligible county, defined as a county located in the El Paso, Laredo, or Pharr department districts, and Terrell County, that has adopted the model rules promulgated by the Texas Water Development Board under Water Code, §16.343.

To be considered for funding under the program, an eligible county must submit an application, in the form prescribed by the department, to the district engineer of the district office responsible for the area in which the proposed project will be implemented. The address and telephone number of the district offices may be obtained by contacting the department's Transportation Planning and Programming Division at (512) 486- 5038. The department must receive completed applications no later than 5:00 p.m., September 30, 2004.

Applications and information regarding the program are available from the department's El Paso, Odessa, Laredo or Pharr district offices, by writing the Transportation Planning and Programming Division, 125 East 11th Street, Austin, Texas 78701-2483, or from the department's website at:

http://www.dot.state.tx.us

TRD-200404526
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 14, 2004

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Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission adopted §134.800 and §134.802, which were published in the July 2, 2004 issue of the *Texas Register*.

The preamble for §134.800 and §134.802 contained errors as indicated below:

Page 6304, left column, 3rd full paragraph, last sentence. The paragraph should end with the following: "Insurance carriers shall be prepared to submit this data on or after January 1, 2005. The commission's Executive Director may inform the carriers by advisory of any change in the implementation date and instructions regarding submission of the data."

TRD-200404541

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Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

*Public Health Care Facility

Alternate

*Public Health Care Facility Representative

*Dentist

*Pharmacist,

*Employer

*General Public 1

In addition to these current vacancies, applications are being accepted for several other positions that will expire on August 31, 2004, leaving the following vacancies:

Primary

*Podiatrist

*Registered Nurse

Alternate

*Medical Doctor

*Physical Therapist

*Podiatrist

*Registered Nurse

*General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802. The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200404516
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 13, 2004

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 16, April 9, July 9, and October 8, 2004). 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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