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Clara Villarreal
3rd Grade

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THE GOVERNOR

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

Appointments

Appointments for September 9, 2004

Appointed to the State Board for Educator Certification for a term to expire February 1, 2009, John Cleveland Shirley of Richardson (replacing Ruby Sciore of Austin who resigned).

Appointed to the North Central Texas Regional Review Committee for a term to expire January 1, 2006, B. Glen Whitley, Commissioner, of Hurst (replacing Jack Hatchell).

Appointed to the North Central Texas Regional Review Committee for a term to expire January 1, 2006, Thomas B. Oliver, Council, of Greenville (replacing Mary Anne Seale).

Appointed to the Brazos Valley Regional Review Committee for a term to expire January 1, 2006, A. Randy Sims, Judge, of Bryan (replacing Alan Willis).

Appointed to the Heart of Texas Regional Review Committee for a term to expire January 1, 2006, Stacy Loeffler Garvin, Mayor, of Lorena (replacing Cleon Ivy).

Appointed to the Heart of Texas Regional Review Committee for a term to expire January 1, 2006, Ray Meadows, Commissioner, of Waco (replacing Robert Campbell).

Appointed to the Heart of Texas Regional Review Committee for a term to expire January 1, 2006, Jerry Wayne Smith, Commissioner, of Meridan (replacing David Keller).

Appointed to the Heart of Texas Regional Review Committee for a term to expire January 1, 2006, Connie Johnson, Mayor, of Lott (replacing Ennis DeGrate).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2006, Clara Peacock Beckett, Commissioner, of Paige (replacing Gary Hopkins).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2006, Caroline L. Murphy, Mayor, of Bee Cave (replacing Bob Young).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2006, John Trube, Mayor, of Buda (replacing John Doerfler).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2006, R. G. Floyd of Llano (replacing J. P. Dodgen).

Appointed to the Capital Area Regional Review Committee for a term to expire January 1, 2006, Howard Benton, Council, of Burnet (replacing Ronald Moore).

Rick Perry, Governor

TRD-200405694

Executive Order

RP 37

Relating to the designation of the Texas Education Agency as the state agency to provide administrative support services for the state developmental disabilities council

WHEREAS, the Developmental Disabilities Assistance and Bill of Rights Act as amended (42 USC 15001 et seq.) requires the state to designate a state agency to provide administrative and fiscal support services for the state developmental disabilities council; and

WHEREAS, Chapter 112 of the Texas Human Resources Code provides for the Governor to designate by Executive Order a state agency to provide administrative support to the Texas Council for Developmental Disabilities; and

WHEREAS, in 1983, the Texas Governor designated the Texas Rehabilitation Commission to provide administrative support to the Council; and

WHEREAS, House Bill No. 2292 passed by the 78th Texas Legislature consolidated various health and human services programs and functions and abolished the Texas Rehabilitation Commission; and

WHEREAS, the United States Department of Health and Human Services, Administration on Children and Families, Administration on Developmental Disabilities has determined that a new designation is required; and

WHEREAS, the non-agency members of the Council strongly support this new designation;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and acting pursuant to Chapter 112 Human Resources Code, do hereby order the following:

The Texas Education Agency shall be designated as the state agency to provide administrative support to the Texas Council for Developmental Disabilities ("Council") consistent with Section 15025(d) of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (42 U.S.C.15001 et seq.).

The Texas Education Agency and the Council may jointly agree for the Council to contract for certain administrative services and supports from other state agencies or private entities as requested by and negotiated with the Council when such arrangements are determined efficient and effective.

The Commissioner of the Department of Assistive and Rehabilitative Services, or his staff, shall coordinate the transfer of appropriations authorities for the Council to the Texas Education Agency including the Council's full time equivalent positions, expenditure history, capital budget authority, and other authorizations and fiscal matters.

The Texas Council for Development Disabilities and Texas Education Agency shall enter into a memorandum of understanding addressing the responsibilities of the Texas Education Agency as the designated state agency for the Council.

This executive order supersedes all previous orders inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 9th day of September, 2004.

Rick Perry, Governor

TRD-200405692

RP 38

Honoring the memory of those who died and the heroes who responded to the attacks against America on September 11, 2001.

WHEREAS, more than 3,000 innocent people lost their lives on September 11, 2001, when the United States of America suffered a series of attacks at the hands of vicious terrorists driven by hate and destruction; and

WHEREAS, these devastating assaults brought great anguish to our state and nation, they also prompted acts of great heroism and bravery as our fellow Americans responded to acts of aggression and hostility; and

WHEREAS, the United States Congress through Public Law 107-89 has designated September 11th of each year as Patriot Day;

WHEREAS, the Texas Legislature has passed and I have signed legislation that establishes each September 11th as Texas First Responders Day in honor of the bravery, courage, and determination of Texas men and women who assist others in emergencies such as that observed in these terrible attacks;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas as the Chief Executive Officer, do hereby order the following:

Saturday, September 11, 2004, shall be a day of prayer and remembrance in Texas to honor the lives and the memory of those who lost their lives and those first responders who committed acts of great bravery during the events of September 11, 2001.

The people of Texas are encouraged to observe a moment of silence beginning at 7:46 a.m. central daylight time to honor the innocent victims who lost their lives as a result of these terrorist attacks.

I further order that, in accordance with a proclamation issued by the President of the United States and by my powers under the Texas Government Code, the flags of the United States of America and of the State of Texas on the state Capitol Building and in the Capitol Complex, at the Governor's Mansion, and upon all public buildings, grounds, and facilities throughout the state shall be flown at half-staff at on Saturday, September 11, 2004.

I further order that these flags shall be flown at half-staff for the same length of time at all Texas offices and facilities abroad. Individuals, businesses, municipalities, counties, and other political subdivisions in Texas are encouraged to fly these flags at half-staff for the same length of time as a sign of respect and honor for those who lost their lives in these terrorist attacks.

This executive order supersedes all previous orders inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 9th day of September, 2004.

Rick Perry, Governor

TRD-200405693

Proclamation 41-2983

TO ALL TO WHOM THESE PRESENTS SHALL COME:

BE IT KNOWN THAT I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, DO HEREBY ORDER A GENERAL ELECTION to be held throughout the State of Texas on the first TUESDAY NEXT AFTER THE FIRST MONDAY IN NOVEMBER, 2004, same being the 2nd day of NOVEMBER, 2004; and

NOTICE THEREOF IS HEREBY GIVEN to the people of Texas and to the COUNTY JUDGE of each county who is directed to cause said election to be held at each precinct in the county on such date for the purpose of electing presidential electors, Members of Congress, state and district officers, and Members of the Legislature, as required by Section 3.003 of the Texas Election Code.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 25th day of August, 2004.

Rick Perry, Governor

ATTESTED BY: Geoffrey S. Connor, Secretary of State

TRD-200405676

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.

Request for Opinions

RQ-0267-GA

Requestor:

The Honorable Ronald D. Hankins

Somervell County Attorney

Post Office Box 1335

Glen Rose, Texas 76043

Re: Whether an elected county official may close his office on a date declared by the governor to be an "official day of mourning" (Request No. 0267-GA)

Briefs requested by October 13, 2004

RQ-0268-GA

Requestor:

The Honorable Bruce Isaacks

Denton County Criminal District Attorney

1450 East McKinney, Suite 3100

Post Office Box 2850

Denton, Texas 76202

Re: Whether a deputy constable's appointment may be revoked if he or she is indicted for a felony (Request No. 0268-GA)

Briefs requested by October 13, 2004

RQ-0269-GA

Requestor:

The Honorable Allan Ritter

Chair, Pensions and Investments Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an individual may simultaneously serve as a trustee of the New Caney Independent School District and as a director of the East Montgomery County Improvement District (Request No. 0269-GA)

Briefs requested by October 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-200405675
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 14, 2004

Opinions

Opinion No. GA-0247

The Honorable David R. Austin

Ector County Auditor

1010 East Eighth Street, Room 520

Odessa, Texas 79761

Re: Whether a county auditor may approve a claim for payment on a contract that was not awarded in compliance with the County Purchasing Act (RQ-0195-GA)

S U M M A R Y

If the county auditor determines that the county awarded a contract without complying with the County Purchasing Act, section 113.065 of the Local Government Code prohibits the auditor from approving a claim for payment on the contract. Such a contract is not void ab initio but may be voided by a court. The fact that the County Purchasing Act does not provide that a contract made in violation of its terms is void does not affect a county auditor's duty under section 113.065 of the Local Government Code to disapprove a claim for payment on a contract awarded without complying with the County Purchasing Act. A commissioners court lacks authority to ratify such a contract or to approve quantum meruit contract payments for such a contract.

Opinion No. GA-0248

Mr. C. Tom Clowe Jr.

Chair, Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether the Bingo TVNet Corporation may legally conduct BingoTV within the State of Texas (RQ-0198-GA)

SUMMARY

The Bingo Enabling Act, Texas Occupations Code chapter 2001, does not authorize the Bingo TVNet Corporation to conduct BingoTV in Texas. BingoTV is not a legal "sweepstakes" within any Texas law.

Opinion No. GA-0249

Mr. J. Paul Johnson, Chair

Board of Regents

Texas Southern University

3100 Cleburne Avenue

Houston, Texas 77004

Re: Whether certain deed restrictions apply to property owned by Texas Southern University, on which the university is constructing privatized student housing (RQ-0199-GA)

SUMMARY

Deed restrictions do not apply to property owned by Texas Southern University, which the University acquired by purchase or by condemnation and on which privatized student housing is being constructed.

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

TRD-200405696
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: September 15, 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 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 73. ELECTRICIANS

16 TAC §73.26

The Texas Department of Licensing and Regulation ("Department") adopts, on an emergency basis new §73.26 regarding the electricians program.

On September 13, 2004 at a regularly called meeting the Texas Commission of Licensing and Regulation ("Commission") adopted on an emergency basis §73.26, Documentation of Required On-The-Job Training.

The Commission, pursuant to Texas Government Code §2001.034 hereby finds that there is an imminent peril to the public welfare, in that severe economic repercussions are highly likely for the individuals who have worked in the electrical trade as employees and as owners of small businesses serving areas where no municipal or regional licenses were required before September 1, 2004. Since September 1, 2004, when licensing requirements of House Bill 1487 adopted by the 78th Legislature took effect many of these persons, who have no other way of earning a livelihood, have not been able to practice their trade. A strict reading of the statute requires persons applying for a license to have been supervised by a master electrician for specified periods of time depending on the license sought. The rule will interpret the terms "master electrician" and "master sign electrician" when used, to define the status of the supervising person to mean either a licensed master or an individual who during the period of supervision performed duties at a level equivalent to a master. The Commission has only recently been made aware of the large number of persons who are no longer able to earn their livings in their chosen trade. Since the issue cannot be addressed by any other means for four to six months, the Commission has acted to adopt an emergency rule to provide relief.

The new rule will be proposed and published at a later date in the Proposed Rules section of the *Texas Register* in accordance with Texas Government Code, §2001.023. The proposed rule will be open for public comment prior to final adoption by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The new rule is adopted on an emergency basis under Texas Occupations Code, Chapter 1305 which establishes a program to regulate electricians; Texas Occupations Code, Chapter 51, §51.203 which provides the Department the authority to promulgate rules to implement each law establishing a program regulated by it; and Texas Government Code, Chapter 2001, §2001.034, which provides for the adoption of administrative rules on an emergency basis without notice and comment.

The statutory provisions affected by the emergency adoption are those set forth in Texas Occupations Code, Chapter 1305 and Chapter 51. No other statutes, articles, or codes are affected by the emergency adoption.

§73.26. Documentation of Required On-The-Job Training.

(a) Individual applicants for electrical licenses and electrical sign licenses may establish required on-the-job training under a master electrician or a master sign electrician by showing that the applicant has been supervised for the requisite period by one or more persons who meet any one of the following:

(1) licensure by any jurisdiction as a master electrician, or master sign electrician as appropriate; or,

(2) a person not licensed as an electrician, who during the period of supervision of the applicant, had experience working in a position having overall responsibility for electrical work, or electrical sign work, as appropriate, that is acceptable in the trade for a business that performed such work in an area where no municipal or regional electrical license, or electrical sign license, was required.

(b) Proof of a non-licensed supervising person's experience may be established by providing on a form acceptable to the department:

(1) a verified statement from the owner or manager of a business described in subsection (a)(2) of this section, that the supervising person during the period the person supervised electrical work performed by the applicant, had overall responsibility for electrical work, or electrical sign work, as appropriate, performed by the business;

(2) a verified statement by the supervising person that he or she was the owner of a business described in subsection (a)(2) of this section with overall responsibility for work performed by the business, and that he or she supervised the applicant in the performance of electrical work or electrical sign work, as appropriate, during the period of employment reported; or,

(3) when statements described in paragraph (1) and (2) of this subsection are not available;

(A) the applicant's verified statement setting out the period of employment, the nature of relevant work provided by the business, the nature of work performed by the applicant, the name and title of supervising persons, that the supervising persons had overall responsibility for electrical work, or electric sign work, as appropriate, and an explanation why a statement under either paragraph (1) or (2) of this subsection is not available; and,

(B) documentation showing applicant's relationship to the business for the relevant period, such as:

(i) payroll records;

(ii) applicant's personal tax records; or,

(iii) other records acceptable to the department.

(c) When the applicant has been supervised by a non-licensed person, the existence of the business described in subsection (a)(2) of this section must be established by providing documentation for the relevant period, such as:

(1) invoices showing work performed;

(2) tax records of the business;

(3) approval of electrical work, or electrical sign work, as appropriate, by officials from jurisdictions having authority over the work, but where no license was required;

(4) yellow page and newspaper advertisements (must include date); or

(5) other records acceptable to the department.

(d) The provisions of subsections (a)(2), (b), and (c) of this section will not apply to applications for electrical, or electrical sign licenses filed with the Department after May 31, 2005.

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 September 13, 2004.

TRD-200405655
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective Date: September 13, 2004
Expiration Date: January 10, 2005
For further information, please call: (512) 463-7348

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 49. 2003 LOW INCOME HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.24

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§49.1 - 49.24, concerning the 2003 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules. The sections are proposed to be repealed in order to enact new sections conforming to the requirements of regulations enacted under the Internal Revenue Code of 1986, §42 as amended, which provides for credits against federal income taxes for owners of qualified low income rental housing.

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

Ms. Carrington also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules for the allocation of low income housing tax credit authority within the State of Texas, thereby enhancing the State's ability to provide decent, safe and sanitary housing for Texans through the tax credit program administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Public hearings will be held across the state between September 27, 2004 and October 8, 2004 to receive input on this proposed repeal. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. 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; by e-mail at the following address: jjoyce@tdhca.state.tx.us; or by fax at (512) 475-0764. Comments must be made within 30 days of this notice.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and 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 this proposed repeal.

§49.1. Purpose, Program Statement, Allocation Goals.
§49.2. Coordination with Rural Agencies.
§49.3. Definitions.
§49.4. State Housing Credit Ceiling.
§49.5. Ineligibility, Disqualification and Debarment, Applicant Standards, Representation by Former Board Member or Other Person.
§49.6. Site and Development Restrictions: Floodplain, Ineligible Building Types, Scattered Site Limitations, Credit Amount, Limitations on the Size of Developments, Rehabilitation Costs.
§49.7. Regional Allocation Formula, Set-Asides, Redistribution of Credits.
§49.8. Pre-Application: Submission, Evaluation Process, Threshold Criteria and Review, Results.
§49.9. Application: Submission, Adherence to Obligations, Evaluation Process, Required Pre-Certification and Acknowledgement, Threshold Criteria, Selection Criteria, Evaluation Factors, Staff Recommendations.
§49.10. Board Decisions; Waiting List; Forward Commitments.
§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.
§49.12. Tax Exempt Bond Developments: Filing of Applications, Applicability of Rules, Supportive Services, Financial Feasibility Evaluation, Satisfaction of Requirements.
§49.13. Commitment and Determination Notices; Agreement and Election Statement.
§49.14. Carryover, 10% Test.
§49.15. Closing of the Construction Loan, Commencement of Substantial Construction.
§49.16. Cost Certification, LURA.
§49.17. Housing Credit Allocations.
§49.18. Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Withdrawals, Cancellations.
§49.19. Compliance Monitoring and Material Non-Compliance.
§49.20. Department Records, Application Log, IRS Filings.
§49.21. Program Fees, Refunds, Public Information Requests, Amendments of Fees and Notification of Fees, Extensions.
§49.22. Manner and Place of Filing All Required Documentation.
§49.23. Waiver and Amendment of Rules.
§49.24. Deadlines for Allocation of Low Income Housing Tax Credits.

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 September 13, 2004.

TRD-200405638
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-4595

CHAPTER 49. 2005 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.23

The Texas Department of Housing and Community Affairs proposes new §§49.1 - 49.23, concerning the 2005 Housing Tax Credit Program Qualified Allocation Plan and Rules. The new sections are necessary to provide procedures for the allocation by the Department of certain housing tax credits available under federal income tax laws to owners of qualified rental housing developments.

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

Ms. Carrington also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the enhancement of the state's ability to provide safe and sanitary housing for Texans through 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 is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Public hearings will be held across the state between September 27, 2004 and October 8, 2004 to receive input on the proposed new sections. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. 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; by e-mail at the following address: jjoyce@tdhca.state.tx.us; or by fax at (512) 475-0764. Comments must be made within 30 days of this notice.

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.

§49.1. Purpose, Program Statement, Allocation Goals.

(a) Purpose. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-92-3 (March 4, 1992), the Department was authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.23 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of accessible affordable housing developments in rural and urban communities. (2306.6701)

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula, and to promote maximum utilization of the available tax credit amount. The processes and criteria utilized to realize this goal are described in §49.8 and §49.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title.

§49.2. Coordination with Rural Agencies.

To assure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to achieve increased sharing of information, reduction of processing procedures, and fulfillment of Development compliance requirements in rural areas, the Department has entered into a Memorandum of Understanding (MOU) with the TX-USDA-RHS to coordinate on existing, rehabilitated, and new construction housing Developments financed by TX-USDA-RHS; and will jointly administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. (2306.6723)

§49.3. Definitions.

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

(1) Administrative Deficiencies--The absence of information or a document from the Application which is important to a review and scoring of the Application as is required under §49.8(d) and §49.9(e), (f) and (g) of this title.

(2) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with at least a 10% ownership interest.

(3) Agreement and Election Statement--A document in which the Development Owner elects, irrevocably, to fix the Applicable Percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(4) Applicable Fraction--The fraction used to determine the Qualified Basis of the qualified low income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit, as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at 10 basis points above the greater of:

(i) the current applicable percentage for the month in which the Application is submitted to the Department, or

(ii) the trailing 1-year, 2-year or 3-year average rate in effect during the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) The percentage indicated in the Agreement and Election Statement, if executed; or

(ii) The actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by Code, §42(b) for the most current month; or

(iii) The percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (2306.6702)

(7) Application--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (2306.6702)

(8) Application Acceptance Period--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department as more fully described in §49.9(a) and §49.21 of this title. For Tax Exempt Bond Developments this period is that period of time prior to the deadline stated in §49.12 of this title.

(9) Application Round--The period beginning on the date the Department begins accepting Applications for the State Housing Credit Ceiling and continuing until all available Housing Tax Credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, but not extending past the last day of the calendar year. (2306.6702)

(10) Application Submission Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for Housing Tax Credits.

(11) Area Median Gross Income (AMGI)--Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42.

(12) At-Risk Development--a Development that:

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(i) Sections 221(d)(3), (4) and (5), National Housing Act (12 U.S.C. Section 17151);

(ii) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(v) any project-based assistance authority pursuant to Section 8 of the U.S. Housing Act of 1937;

(vi) Sections 514, 515, 516, and 538 Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); and

(vii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. Section 42), and

(B) is subject to the following conditions:

(i) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years of July 31 of the year the Application is submitted); or

(ii) the federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site, except that a Housing Authority proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund, will be qualified as an At-Risk Development if it meets the requirements described in §49.7(b)(2) of this title.

(D) With the exception of Housing Authorities proposing reconstruction of public housing, supplemented with HOPE VI funding or funding from their capital grant fund, Developments must be at risk of losing all affordability on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development. (2306.6702)

(13) Bedroom--A portion of a Unit set aside for sleeping which is no less than 100 square feet; has no width or length less than 8 feet; has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space.

(14) Board--The governing Board of the Department. (2306.004)

(15) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E) and Treasury Regulations, §1.42-6.

(16) Carryover Allocation Document--A document issued by the Department, and executed by the Development Owner, pursuant to §49.14 of this title.

(17) Carryover Allocation Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(18) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.

(19) Colonia--A geographic area located in a county some part of which is within 150 miles of the international border of this state and that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the Texas Water Development Board.

(20) Commitment Notice--A notice issued by the Department to a Development Owner pursuant to §49.13 of this title and also referred to as the "commitment."

(21) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1), unless the LURA has been extended consistent with §49.9(g)(16) of this title.

(22) Control--(including the terms "Controlling," "Controlled by," and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing General Partner of a limited liability company.

(23) Cost Certification Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Housing Tax Credit Program.

(24) Credit Period--With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(25) Department--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (2306.004)

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

(27) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed 15% of the Eligible Basis) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(28) Development--A proposed qualified low income housing project, for new construction or rehabilitation, as defined by the Code, §42(g), that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

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

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

(29) Development Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

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

(31) Development Team--All Persons or Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(32) Economically Distressed Area--Consistent with §17.921 of Texas Water Code, an area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 1989, as determined by the Texas Water Development Board.

(33) Eligible Basis--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42(d).

(34) Executive Award and Review Advisory Committee ("The Committee")--A Departmental committee that will make funding and commitment recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities

as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. (2306.6702)

(35) Extended Housing Commitment--An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(36) General Contractor--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

(37) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(38) Governmental Entity--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(39) Guarantor--Means any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(40) Historic Development--A residential Development that has received a historic property designation by a federal, state or local government entity.

(41) Historically Underutilized Businesses (HUB)--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(42) Housing Credit Agency--A Governmental Entity charged with the responsibility of allocating Housing Tax Credits pursuant to the Code, §42. For the purposes of this title, the Department is the sole "Housing Credit Agency" of the State of Texas.

(43) Housing Credit Allocation--An allocation by the Department to a Development Owner of Housing Tax Credit in accordance with the provisions of this title.

(44) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, that amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which it allocates to the Development.

(45) Housing Tax Credit ("tax credits")--A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. (2306.6702)

(46) HUD--The United States Department of Housing and Urban Development, or its successor.

(47) Ineligible Building Types--Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential development.

(B) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any Qualified Elderly Development with any Units having more than two bedrooms.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Development proposing new construction, other than a Development (new construction or rehabilitation) composed entirely of single-family dwellings, having any Units with four or more bedrooms.

(F) Any Development that violates the Integrated Housing Policy of the Department.

(G) Any Development involving any new construction of additional Units (other than a Qualified Elderly Development, a single family development or a transitional housing development) in which any of the designs in clauses (i) - (iii) of this subparagraph are proposed. For purposes of this limitation, a den, study or other similar space that could reasonably function as a bedroom will be considered a bedroom. An Application may reflect a total of Units for a given bedroom size greater than the percentages stated below to the extent that the increase is only to reach the next highest number divisible by four.

(i) more than 60% of the total Units are one bedroom Units; or

(ii) more than 45% of the total Units are two bedroom Units; or

(iii) more than 35% of the total Units are three bedroom Units.

(48) IRS--The Internal Revenue Service, or its successor.

(49) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (2306.6702)

(50) Material Non-Compliance--As defined in §60.1 of this title.

(51) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (2306.6734)

(52) ORCA--Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code. (2306.6702)

(53) Person--Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(54) Persons with Disabilities--A person who:

(A) has a physical, mental or emotional impairment that:

(i) is expected to be of a long, continued and indefinite duration,

(ii) substantially impedes his or her ability to live independently, and

(iii) is of such a nature that the disability could be improved by more suitable housing conditions,

(B) has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. Section 15002),or

(C) has a disability, as defined in 24 CFR §5.403.

(55) Pre-Application--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in §49.8 and §49.21 of this title.

(56) Pre-Application Acceptance Period--That period of time during which Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(57) Principal--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners and Special LP and Principals with at least 10% ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(58) Prison Community--A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison within the past five years.

(59) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(60) Qualified Allocation Plan (QAP)--

(A) As defined in §42(m)(1)(B): Any plan which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions; which also gives preference in allocating housing credit dollar amounts among selected projects to projects serving the lowest income tenants, projects obligated to serve qualified tenants for the longest periods, and projects which are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan; and which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of §42 and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(B) As defined in §2306.6702, Texas Government Code: A plan adopted by the board under this subchapter that provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions; provides a procedure for the department, the department's agent, or another private contractor of the department to use in monitoring compliance with the qualified allocation plan and this subchapter; and consistent with §2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program.

(61) Qualified Basis--With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(62) Qualified Census Tract--Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(63) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act and:

(A) is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See 42 U.S.C. Section 3607(b)).

(64) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(65) Qualified Nonprofit Organization--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated

with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the TX-USDA-RHS Allocation.

(66) Qualified Nonprofit Development--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (2306.6729)

(67) Reference Manual--That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program.

(68) Related Party--As defined,

(A) The following individuals or entities:

(i) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573, Texas Government Code;

(ii) a person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(iii) two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(I) the total combined voting power of all classes of stock of each of the corporations that can vote;

(II) the total value of shares of all classes of stock of each of the corporations; or

(III) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) a grantor and fiduciary of any trust;

(v) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) a fiduciary of a trust and a beneficiary of the trust;

(vii) a fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:

(I) the trust; or

(II) a person who is a grantor of the trust;

(viii) a person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) a corporation and a partnership or joint venture if the same persons own more than:

(I) 50 percent of the outstanding stock of the corporation; and

(II) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

(x) an S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xi) an S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xii) a partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or

(xiii) two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests. Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(69) Rules--The Department's Housing Tax Credit Qualified Allocation Plan and Rules as presented in this title.

(70) Rural Area--An area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for new construction or rehabilitation funding by TX-USDA-RHS. (2306.6702)

(71) Rural Development--A Development located within a Rural Area and for which the Applicant applies for tax credits under the Rural Regional Allocation.

(72) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §49.9(g) of this title.

(73) Set-Aside--A reservation of a portion of the available Housing Tax Credits to provide financial support for specific types of Applications or Applicants as required by the Qualified Allocation Plan on a priority basis. (2306.6702)

(74) State Housing Credit Ceiling--The limitation imposed by the Code, §42(h), on the aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3).

(75) Student Eligibility--Per the Code, §42(i)(3)(D), "A unit shall not fail to be treated as a low-income unit merely because it is occupied:

(A) by an individual who is:

(i) a student and receiving assistance under Title IV of the Social Security Act (42 U.S.C. §§601 et seq.), or

(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) entirely by full-time students if such students are:

(i) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(ii) married and file a joint return."

(76) Tax Exempt Bond Development--A Development which receives a portion of its financing from the proceeds of tax exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(77) Third Party--A Third Party is a Person who is not an:

(A) Applicant, General Partner, Developer, or General Contractor, or

(B) an Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor, or

(C) Person(s) receiving any portion of the contractor fee or developer fee.

(78) Threshold Criteria--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §49.9(f) of this title. (2306.6702)

(79) Total Housing Development Cost--The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(80) TX-USDA-RHS--The Rural Housing Services (RHS) of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(81) Unit--Any residential rental unit in a Development consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. (2306.6702)

(82) Urban/Exurban Area--All those areas in the state of Texas not meeting the qualifications for a Rural Area as defined in paragraph (70) of this section.

§49.4. State Housing Credit Ceiling.

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service. The Department shall publish each such determination in the *Texas Register* within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. Housing Credit Allocations made to Tax Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§49.5. Ineligibility, Disqualification and Debarment, Applicant Standards, Representation by Former Board Member or Other Person.

(a) Ineligibility. An Application will be ineligible if:

(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or,

(2) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline; or,

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format on or before the close of the Application Acceptance Period. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax Exempt Bond Developments is unresolved as of the date the Application is submitted; or

(5) (2306.6703) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) a member of the Board; or

(B) the Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over housing tax credits employed by the Department.

(6) (2306.6703) The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) the Applicant proposes to maintain for a period of 30 years or more 100 percent of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the Area Median Gross Income, adjusted for family size; and

(B) at least one-third of all the units in the Development are public housing units or Section 8 Development-based units; or,

(7) The Development is located in a municipality or, if located outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax Exempt Bond Developments at the time the reservation is made by the Texas Bond Review Board) unless the Applicant:

(A) has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development in the form of a resolution; and

(B) has included in the Application a written statement of support from that governing body referencing this rule and authorizing an allocation of housing tax credits for the Development;

(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2005 (or for Tax Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered); or

(8) The Applicant proposes to construct a new Development that is located one linear mile (measured by a straight line on a map) or less from a Development that:

(A) serves the same type of household as the new Development, regardless of whether the Developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of Housing Tax Credits (including Tax Exempt Bond Developments) for new construction at any time during the three-year period preceding the date the application round begins (or for Tax Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and

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

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

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

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

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

(iv) the local government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the local government vote must be received by the Department no later than April 1, 2005 (or for Tax Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed). (2306.6703)

(E) In determining the age of an existing development as it relates to the application of the three-year period, the development will be considered from the date the Board took action on approving the allocation of tax credits. For example, a Development whose credits were approved by the Board on March 15, 2002, could not have a new Development located within one mile until March 16, 2005. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(h) of this title.

(9) A submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department.

(b) Disqualification and Debarment. The Department will disqualify an Application, and/or debar a Person (see §2306.6721, Texas Government Code), if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department shall debar a Person for no shorter period than the longer of one year from the date of debarment, or until the violation causing the debarment has been remedied. If the Department determines the facts warrant it, a Person may be debarred for up to fifteen years. Causes for disqualification and debarment include: (2306.6721)

(1) The provision of fraudulent information, knowingly false documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or,

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has 10% or more ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Non-Compliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in §60.1 of this title; or

(3) The Applicant, Development Owner, Developer or Guarantor or anyone that has 10% or more ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an incidence of Material Non-Compliance with the LURA or the program rules in effect for such tax credit property as further described in §60.1 of this title; or

(4) The Applicant, Development Owner, Developer, or any Guarantor, or any Affiliate of such entity has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department.

(5) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees within 30 days of when they were billed by the Department, as further described in §49.20 of this title; or

(6) the Applicant or a Related Party and any Person who is active in the construction, rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a lobbyist by the Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date an Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application. Communication with Department staff must be in accordance with §49.9(b) of this title; violation of the communication restrictions of §49.9(b) of this title is also a basis for disqualification and/or debarment. (2306.1113)

(7) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(8) Applicants may be ineligible as further described in §49.17(c)(8) of this title.

(c) Certain Applicant and Development Standards. Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that: (2306.223)

(1) the Development is not necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low income or families of moderate income can afford;

(2) the Development Owner undertaking the proposed Development will not supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;

(3) the Development Owner is not financially responsible;

(4) the Development Owner has contracted, or will contract for the proposed Development with, a Developer that:

(A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) has breached a contract with a public agency and failed to cure that breach; or

(C) misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(5) the financing of the housing Development is not a public purpose and will not provide a public benefit; and

(6) the Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner. (See §2306.223, Texas Government Code).

(d) Representation by Former Board Member or Other Person. (2306.6733)

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over housing tax credits previously employed by the Department may not:

(A) for compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceased;

(B) represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceased.

(2) A Person commits an offense if the Person violates this section. An offense under this section is a Class A misdemeanor. (See §2306.6733, Texas Government Code).

(e) Due Diligence; Sworn Affidavit. In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven business days of the date of the request by the Department, the Department may terminate the Application.

(f) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this title. They may also utilize the appeals process described in §49.17(b) of this title.

§49.6. Site and Development Restrictions: Floodplain, Ineligible Building Types, Scattered Site Limitations, Credit Amount, Limitations on the Size of Developments, Rehabilitation Costs.

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

(b) Ineligible Building Types. Applications involving Ineligible Building Types as defined in §49.3(47) of this title will not be considered for allocation of tax credits.

(c) Scattered Site Limitations. Consistent with §49.3(28) of this title, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units.

(d) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Housing Tax Credits approved by the Board during the 2005 calendar year, including commitments from the 2005 Credit Ceiling and forward commitments from the 2006 Credit Ceiling, are applied to the credit cap limitation for the 2005 Application Round. In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has 96 Units or less. To be considered for this provision, a copy of a Joint Venture Agreement and narrative on how this builds the capacity of the inexperienced developers is required. Tax Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply (2306.6711(b)):

(1) to an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) to the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

(3) to a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds, grants or social services; and

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

(e) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units if the Development involves Housing Tax Credits; the minimum Development size will be 4 Units if the funding source only involves the Housing Trust Fund or HOME Program.

(2) Rural Developments involving new construction will be limited to 96 Units. Rural Developments involving only rehabilitation do not have a size limitation.

(3) Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 252 Total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax Exempt Bond Developments will be limited to 252 Total Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months.

(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, housing tax credits from the Credit Ceiling to more than one Development in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's allocation of credits, the Development is considered to be in the calendar year in which the Board votes, not in the year of the Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2005 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this rule, any two sites not more than one linear mile apart are deemed to be "in a single community." (2306.6711) This restriction does not apply to the allocation of housing tax credits to Developments financed through the Tax Exempt Bond program. (2306.67021)

(g) Rehabilitation Costs. Rehabilitation Developments must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $6,000 per Unit in direct hard costs.

(h) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

§49.7. Regional Allocation Formula, Set-Asides, Redistribution of Credits.

(a) Regional Allocation Formula. (2306.111) As required by §2306.111, Texas Government Code, the Department uses a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling to all urban/exurban areas and rural areas. The formula is based on the need for housing assistance, and the availability of housing resources in those urban/exurban areas and rural areas, and the Department uses the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula establishes separate targeted tax credit amounts for rural areas and urban/exurban areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's web site. The regional allocation for rural areas is referred to as the Rural Regional Allocation and the regional allocation for urban/exurban areas is referred to as the Urban/Exurban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition or be located in a Prison Community. Approximately 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS and that meet the definition of a Rural Development and do not exceed 76 Units if new construction. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Commitments of 2005 Housing Tax Credits issued by the Board in 2004 will be applied to each Set-Aside, Rural Regional Allocation, Urban/Exurban Regional Allocation and TX-USDA-RHS Allocation for the 2005 Application Round as appropriate.

(b) Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (2306.111(d))

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Qualified Nonprofit Development applying for this Set-Aside. If the organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit set-aside must have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (2306.6729 and 2306.6706(b))

(2) At least 15% of the allocation to each Uniform State Service Region will be set aside for allocation under the At-Risk Development Set-Aside. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of developments designated as At-Risk Developments as defined in §49.3(12) of this title. (2306.6714). A Housing Authority proposing reconstruction of public housing supplemented with HOPE VI funding or capital grant funds will be eligible to participate in this set-aside. In order to qualify for this set-aside, the housing authority providing the HOPE VI funding must provide evidence that it received a HOPE VI grant from HUD and made a commitment that HOPE VI funds will be provided to the Development. To qualify as an At-Risk Development, the Applicant (with the exception of housing authorities with HOPE VI or capital grant funds) must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §49.3(12)(A) of this title, or provide evidence

that it will renew, retain or preserve the financial benefit described in §49.3(12)(A) of this title.

(c) Redistribution of Credits. (2306.111(d)) If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Rural Regional Allocation and Urban/Exurban Regional Allocation within each Uniform State Service Region and among the Set-Asides, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §49.9(d) of this title and the level of demand exhibited in the Uniform State Service Regions during the Allocation Round. However as described in subsection (b)(1) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§49.8. Pre-Application: Submission, Evaluation Process, Threshold Criteria and Review, Results (2306.6704).

(a) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §49.20 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) Communication with the Department. Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §49.9(b) of this title. (2306.1113)

(c) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Any Application from a TX-USDA-RHS 515 Development (only for rehabilitation) is exempted from the Pre-Application Evaluation Process and will automatically receive the Pre-Application points further outlined in §49.9(g) of this title. Applications involving New Construction that are associated with a TX-USDA-RHS Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §49.9(g) of this title. An Application that has not received confirmation from the state office of RHS of its financing from TX-USDA-RHS may qualify for Pre-Application points, but such points shall be withdrawn upon the Development's receipt of TX-USDA-RHS financing. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §49.9(d)(4) of this title. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.

(d) Pre-Application Threshold Criteria and Review. Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(1) Submission of a "Pre-Application Submission Form" and "Certification of Pre-Application Total Self-Score" and

(2) Evidence of site control through March 1, 2005 as evidenced by the documentation required under §49.9(f)(7)(A) of this title.

(3) Evidence that all of the notifications required under this paragraph have been made. Notifications under subparagraph (B)(i) of this paragraph must be made by the deadlines described in that clause; notifications under subparagraph (B)(ii) - (ix) of this paragraph must be made prior to the close of the Pre-Application Acceptance Period. (2306.6704) Evidence of notification must meet the requirements identified in subparagraph (A) of this paragraph to all of the individuals and entities identified in subparagraph (B) of this paragraph. Evidence of such notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity, a sworn certified affidavit stating that they made the notifications prior to the deadlines and a copy of the entire mailing list (which includes the names and addresses) of all of the recipients. (2306.6705) (2306.6704)

(A) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) Statement of whether the Development proposes new construction or rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, transitional, elderly);

(vi) The approximate total number of Units and approximate total number of low income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(B) Notification must be sent to all of the following individuals and entities. Officials to be notified are those officials in office at the time the Application is submitted.

(i) Notification to Local Elected Officials for Neighborhood Organization Input. Evidence must be provided that a letter requesting information on neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and meeting the requirements of "Local Elected Official Notification" as outlined in the Application was sent no later than January 15, 2005 to the local elected official for the city or if located outside of a city, then the county where the Development is proposed to be located. If the Development is located in a jurisdiction that has district based local elected officials, the notification must be made to the city council member or county commissioner representing that district; if the Development is located in a jurisdiction that has at-large local elected officials, the notification must be made to the mayor or county judge for the jurisdiction. A copy of the reply letter or other official third-party documentation from the local elected official must be provided. All entities identified in the letter from the local elected official whose boundaries include the proposed Development 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 local elected officials, then such evidence in lieu of notification may be acceptable. If no reply letter is received from the local elected officials by February 25, 2004, (or For Tax Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application) then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site, the Applicant must notify those organizations. The Applicant must also certify that any organizations in a response letter that are not notified do not contain the Development within their boundaries. In the event that local elected officials refer the Applicant to another source, the Applicant must also notify that source and request the same information. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located, the Applicant must attest to that fact in the format provided by the Department as part of the Application.

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Presiding officer of the governing body of any municipality containing the Development;

(v) All elected members of the governing body of any municipality containing the Development;

(vi) Presiding officer of the governing body of the county containing the Development;

(vii) All elected members of the governing body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(e) Pre-Application Results. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §49.9(g)(10) of this title, will be eligible for Pre-Application points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

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

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §49.20 of this title, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including both threshold and selection criteria documentation. (2306.6708) An Applicant may not change or supplement an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(1) of this title or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17 of this title.

(b) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1) - (3) of this subsection. Section 49.5(b)(7) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(1) The communication must be restricted to technical or administrative matters directly affecting the Application;

(2) the communication must occur or be received on the premises of the Department during established business hours;

(3) a record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication. (2306.1113)

(c) Adherence to Obligations. (2306.6720) All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the LURA. To protect the integrity of the Department's processes and decisions, evidence of false statements or misrepresentations from applicant representatives, neighborhood representatives, or other persons will be considered for appropriate action, including terminating the Application, rejecting neighborhood organization letters for scoring, and possible referral to local district and county attorneys.

(d) Evaluation Process. Applications will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5(b)(2) of this title; Applicants will be promptly notified in these instances.

(1) Eligibility and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility under §49.5 and §49.6 of this title and Set-Aside eligibility will be confirmed. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (g) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every application.

(2) Priority Review Assessment. Each Application will be assessed based on either the Applicant's self-score or the Department's preliminary score, region, and any Set-Asides that the Application indicates it is eligible for, consistent with paragraph (5) of this subsection. Those Applications that appear to be most competitive will be designated as "priority" Applications. Applications that do not appear to be competitive may not be reviewed in detail for Threshold Criteria during the Application Round.

(3) Threshold Criteria Review. Applications that are designated as "priority" from the Priority Review Assessment will be evaluated in detail against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of Administrative Deficiencies, in which event the Applicant may be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, Applicants will be notified of their final score. As Applications are evaluated under this Review process, a final score by the Department may remove the Application from "priority" status at which point other Applications may be designated as "priority" and reviewed under this paragraph.

(4) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility and Selection, and Threshold Criteria may occur separately, Administrative Deficiency requests may be made several times. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within eight business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within ten business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period.

(5) Subsequent Evaluation of Prioritized Applications. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those applications identified as "priority." This prioritization order will also be used in making recommendations to the Board. Assignments will be determined by first selecting the Applications with the highest scores in the Nonprofit Set-Aside statewide. Then selection will be made for the Applications with the highest scores in the At-Risk Set-Aside and TX-USDA-RHS Allocation within each Uniform State Service Region. Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments, regardless of Set-Aside, in accordance with the requirements under §49.7(a) of this title for a Rural Regional Allocation and Urban/Exurban Regional Allocation. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban/Exurban Regional Allocation. Funds for the Rural Regional Allocation or Urban/Exurban Regional Allocation within a region, for which there are no eligible feasible applications, will be redistributed as provided in §49.7(c) of this title, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §49.6(d) of this title, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting set-aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set-Aside categories. To enable the Board to

establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available housing tax credits are allocated within the period required by law. (2306.6710(a), (b) and (d); 2306.111)

(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. Receipt of feasibility points under subsection (g)(1) of this section does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (g)(1) of this section. (2306.6711(b); 2306.6710(d))

(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant.

(7) Compliance Evaluation. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title.

(8) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TX-USDA-RHS Set-Aside, the Department may rely on the physical site inspection performed by TX-USDA-RHS.

(e) Pre-Certification and Acknowledgement Procedures. No later than 14 days prior to the close of the Application Acceptance Period, an Applicant must submit the documents required in this subsection to obtain the required pre-certification and acknowledgement. For Applications submitted for Tax Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all documents in this section must be submitted with the Application.

(1) Experience Certificate. Upon receipt of the evidence required under this paragraph, a certification from the Department will be provided to the Applicant for inclusion in their Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the units, the individual must show that the units were successfully developed as required below, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least $6,000 of direct hard cost per unit.

(A) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(i) at least 100 residential units; or

(ii) at least 36 residential units if the Development applying for credits is a Rural Development; or

(iii) at least 25 residential units if the Development applying for credits has 36 or fewer total Units.

(B) One of the following documents must be submitted: American Institute of Architects (AIA) Document A111--Standard Form of Agreement Between Owner & Contractor, AIA Document G704--Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(i) that the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(ii) that the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(iii) the number of units completed or substantially completed.

(2) Financial Statement and Authorization to Release Credit Information. At the option of the Applicant, financial statements may be pre-submitted and a Department acknowledgement of receipt substituted for the financials in the subsequent Application. The acknowledgement will not constitute acceptance by the Department that financial statements provided are acceptable in any manner but only acknowledge their receipt. Applicants that do not opt to pre-submit financial statements and authorization to release credit information must provide a full submission in accordance with this paragraph at the time of application. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has 10% or more ownership interest in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(A) Financial statements for an individual must not be older than 90 days from the date of Application submission.

(B) Financial statements for partnerships or corporations should be for the most recent fiscal year ended 90 days prior to the date of Application submission. An audited financial statement should be provided, if available, and all partnership or corporate financials must be certified. Financial statements are required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual.

(C) Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case.

(3) Previous Participation. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Portfolio Management and Compliance Division will be provided to the Applicant for inclusion in their Application(s). A completed and executed "Previous Participation and Background Certification Form" as provided in the Application must be provided for the Applicant, Development Owner, Developer and Guarantor and each entity shown on an organizational chart as described in subsection (f)(9)(A) of this section that has 10% or more ownership interest in the Development Owner, Developer or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2005 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(4) National Previous Participation. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Portfolio Management and Compliance Division will be provided to the Applicant for inclusion in their Application(s). If the Applicant, Development Owner or any of its Affiliates, Developer and Guarantor or any entity shown on the organizational chart described in subsection (f)(9)(A) of this section that have 10% or more ownership interest in the Development Owner have, or have had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, then evidence must be submitted that such Persons have sent the "National Previous Participation and Background Certification Form" to the appropriate Housing Credit Agency for each state in which they have developed or operated affordable housing. Nonprofit entities and public housing authorities are only required to submit documentation for the entity itself; documentation for board members and executive directors is not required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. This form is only necessary when the Developments involved are outside the state of Texas. An original form is not required. Evidence of such notification shall be a copy of the form sent to the agency and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from the agency.

(f) Threshold Criteria. The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

(1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. (2306.1111)

(2) Completion and submission of the Site Packet as provided in the Application.

(3) Set-Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding as required in the Application.

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. All Developments, must meet at least the minimum threshold of points. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to complete this exhibit. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing rehabilitation or proposing Single Room Occupancy will receive double points for each item. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.17(c) of this title and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) as follows:

(I) Total Units are less than 40, 3 points are required to meet Threshold;

(II) Total Units are between 40 and 76, 6 points are required to meet Threshold;

(III) Total Units are between 77 and 99, 9 points are required to meet Threshold;

(IV) Total Units are between 100 and 149, 12 points are required to meet Threshold;

(V) Total Units are between 150 and 199, 15 points are required to meet Threshold;

(VI) Total Units are more than 200, 18 points are required to meet Threshold.

(ii) Amenities for selection include those items listed in subclauses (I) - (XXIV) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraph (D) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

(I) Full perimeter fencing with controlled gate access (3 points);

(II) Full perimeter fencing without controlled gate access (2 points);

(III) Gazebo w/sitting area (1 point);

(IV) Accessible walking path (1 point);

(V) Community gardens (1 point);

(VI) Community laundry room (1 point);

(VII) Public telephone(s) available to tenants 24 hours a day (2 points);

(VIII) Barbecue grills and picnic tables--at least one for every 50 Units (1 point);

(IX) Covered pavilion that includes barbecue grills and tables (2 points);

(X) Swimming pool (3 points);

(XI) Furnished fitness center (2 points);

(XII) Equipped Business Center (computer and fax machine) or Equipped Computer Learning Center (2 points);

(XIII) Furnished Community room (1 point);

(XIV) Library (separate from the community room) (1 point);

(XV) Enclosed sun porch or covered community porch/patio (2 points);

(XVI) Service coordinator office in addition to leasing offices (1 point);

(XVII) Senior Activity Room (Arts and Crafts, etc.)--Only Qualified Elderly Developments Eligible (2 points);

(XVIII) Health Screening Room (1 point);

(XIX) Secured Entry (elevator buildings only)--(1 point);

(XX) Horseshoe, Putting Green or Shuffleboard Court--Only Qualified Elderly Developments Eligible (1 point);

(XXI) Community Dining Room w/full or warming kitchen--Only Qualified Elderly Developments Eligible (3 points);

(XXII) Two Children's Playgrounds Equipped for 5 to 12 year olds, two Tot Lots, or one of each--Only Family Developments Eligible (2 points) or one point for one playground or one tot lot;

(XXIII) Sport Court (Tennis, Basketball or Volleyball)--Only Family Developments Eligible (2 points); or

(XXIV) Furnished and staffed Children's Activity Center--Only Family Developments Eligible (3 points).

(B) A certification that the Development will have all of the following Unit Amenities (not required for Single Room Occupancy Developments). If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to complete this exhibit. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) All Units must be built/rehabilitated with three networks: One network installed for phone using CAT5e or better wiring; a second network for data installed using CAT5e or better wiring, networked from the Unit back to a central location; and a third network for TV services using COAX cable;

(ii) Mini blinds or window coverings for all windows;

(iii) Dishwasher and Disposal (not required for TX-USDA-RHS Developments);

(iv) Refrigerator;

(v) Oven/Range;

(vi) Exhaust/vent fans in bathrooms;

(vii) Ceiling fans in living areas and bedrooms; and

(viii) Be designed in accordance with International Building Code.

(C) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(D) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (2306.257; 2306.6705(a)(7))

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with

which the Applicant has contracted that qualify as Minority Owned Businesses. (2306.6734)

(F) A certification that the Development will comply with the accessibility standards that are described in Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for individuals with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3 - 8 of the Uniform Federal Accessibility Standards (UFAS), shall be deemed to meet this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for individuals with hearing or vision impairments. Additionally, in Developments involving new construction where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. At the time the 10% Test Documentation is submitted, a certification from an accredited architect or Department-approved third party accessibility specialist, will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for individuals with mobility impairments or individuals with hearing or vision impairments. A similar certification will also be required after the Development is completed. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code. (2306.6722 and 2306.6730)

(G) A certification that the Development will adhere to the 2003 International Energy Conservation Code (IECC) in the construction of each tax credit Unit, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (2306.6725(b))

(H) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 7(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(I) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 Texas Government Code and as further described in §1.37 of this title. (§2306.186)

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) - (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving new construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (ii) of this subparagraph are required:

(i) a site plan which:

(I) is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) identifies all residential and common buildings and amenities; and

(III) clearly delineates the flood plain boundary lines and all easements shown in the site survey;

(ii) floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition; and

(iii) Unit floor plans for each type of Unit showing special accessibility and energy features. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application. For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 650 square feet or less is considered not more than a one-bedroom Unit, a Unit with 651 to 900 square feet is considered not more than a two-bedroom Unit and a Unit with greater than 900 square feet is considered not more than a three-bedroom Unit; and

(B) A boundary survey of the proposed Development site and of the property to be purchased. In cases where more property is purchased than the proposed site of the Development, the survey or plat must show the survey calls for both the larger site and the subject site. The survey does not have to be recent; but it must show the property purchased and the property proposed for development. In cases where the site of the Development is only a part of the site being purchased, the depiction or drawing of the Development portion may be professionally compiled and drawn by an architect, engineer or surveyor.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) - (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (2306.6705(a)(1))

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of housing tax credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (2306.6705(a)(2) and (3))

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Rehabilitation Developments must submit a Property Condition Assessment performed in accordance with §1.36 of this title, Property Condition Assessment Guidelines. For Developments receiving financing from TX-USDA-RHS, a copy of the checklist prepared by TX-USDA-RHS may be submitted in lieu of the Property Condition Assessment. The Property Condition Assessment may be submitted as a Supplemental Threshold Report consistent with the timelines and submission documentation requirements identified in paragraph (14)(D) of this subsection.

(F) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed $7,500 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) - (D) of this paragraph:

(A) Evidence of site control in the name of Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All individual Persons who are members of the ownership entity of the seller of the proposed site must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided:

(i) a recorded warranty deed; or

(ii) a contract for sale or lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) an exclusive option to purchase or earnest money contract (which must show that the earnest money has been deposited) which is valid for the entire period the Development is under consideration for tax credits.

(iv) As described in clauses (ii) and (iii) of this subparagraph, site control must be continuous. Closing on the property is acceptable, as long as evidence is provided that there was no period in which control was not retained.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period. (2306.6705(a)(5))

(i) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance; the letter must also state that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document; or if no such planning document exists, then the letter from the local municipal authority must state that there is a need for affordable housing.

(ii) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development or that there is not a zoning requirement; or

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) In the case of a rehabilitation Development, if the property is currently a non-conforming use as presently zoned, a letter which discusses the items in subclauses (I) - (IV) of this clause:

(I) a detailed narrative of the nature of non-conformance;

(II) the applicable destruction threshold;

(III) owner's rights to reconstruct in the event of damage; and

(IV) penalties for noncompliance.

(C) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) - (iv) of this subparagraph:

(i) bona fide financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in the name of the Development Owner and/or expressly allows the transfer to the Development Owner; or,

(ii) bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application. At a minimum, evidence from the lending agency that an application for funding has been made and a term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted. Evidence of application for funding from

another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an application has been filed as required by the Application Submission Procedures Manual. If the commitment from the other funding source has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the other funding source, the Commitment Notice will be rescinded; or

(iv) if the Development will be financed through Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clause (i) of this subparagraph and either of the documents described in clauses (ii) and (iii) of this subparagraph, and satisfying the requirements of clause (iv) of this subparagraph, if applicable:

(i) a copy of the full legal description

(ii) a copy of the current title policy which shows that the ownership (or leasehold) of the land/Development is vested in the exact name of the Development Owner; or

(iii) a copy of a current title commitment with the proposed insured matching exactly the name of the Development Owner and the title of the land/Development vested in the exact name of the seller or lessor as indicated on the sales contract or lease.

(iv) if the title policy or title commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(8) Evidence of all of the notifications described in the subparagraphs of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" statement provided in the Application.

(A) Evidence of notification meeting the requirements identified in clause (i) of this subparagraph to all of the individuals and entities identified in clause (ii) of this subparagraph. Evidence of such notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity, a sworn affidavit stating that they made all required notifications prior to the deadlines and a copy of the entire mailing list (which includes the names and addresses) of all of the recipients. (2306.6704) If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a Pre-Application if the Application reflects a total Unit increase or decrease of greater than 10%, an increase or decrease of greater than 10% for any given level of AMGI, or a change to the population being served (elderly, family or transitional). For Applications submitted for Tax Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notification and proof thereof must not be older than 30 days prior to the date the Application is submitted.

(i) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes new construction or rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, transitional, elderly);

(VI) The approximate total number of Units and approximate total number of low income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded.

(ii) Notification must be sent to all of the following individuals and entities. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Notification to Local Elected Officials for Neighborhood Organization Input. Evidence must be provided that a letter requesting information on neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site and meeting the requirements of "Local Elected Official Notification" as outlined in the Application was sent no later than January 15, 2005 to the local elected official for the city or if located outside of a city, then the county where the Development is proposed to be located. If the Development is located in a jurisdiction that has district based local elected officials, the notification must be made to the city council member or county commissioner representing that district; if the Development is located in a jurisdiction that has at-large local elected officials, the notification must be made to the mayor or county judge for the jurisdiction. A copy of the reply letter or other official third-party documentation from the local elected official must be provided. All entities identified in the letter from the local elected official whose boundaries include the proposed Development 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 local elected officials, then such evidence in lieu of notification may be acceptable. If no reply letter is received from the local elected officials by February 25, 2004, (or For Tax Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application) then the Applicant must submit a statement attesting to that fact. If an Applicant has knowledge of any neighborhood organizations on record with the state or county in

which the Development is to be located and whose boundaries contain the proposed Development site, the Applicant must notify those organizations. The Applicant must also certify that any organizations in a response letter that are not notified do not contain the Development within their boundaries. In the event that local elected officials refer the Applicant to another source, the Applicant must also notify that source and request the same information. If the Applicant has no knowledge of neighborhood organizations within whose boundaries the Development is proposed to be located, the Applicant must attest to that fact in the format provided by the Department as part of the Application.

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Presiding officer of the governing body of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development site prior to the date the Application is submitted. For Tax Exempt Bond Developments the sign must be installed no later than 14 days after the Department's receipt of Volumes I and II. Evidence submitted with the Application must include photographs of the site with the installed sign and invoice receipt confirming installation from the entity that installed the sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. For Tax Exempt Bond Developments for which the Department is not the issuer of the bonds, the Applicant must ensure that the date, time and location of the TEFRA hearing are indicated on the sign. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's option, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If the option in clause (i) of this subparagraph is used, then evidence must be provided affirming the local zoning notification requirements.

(i) all addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) for Developments located in communities that do not have zoning, communities that do not require a zoning notification, or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that they have notified each tenant at the Development and let the tenants know of the Department's public hearing schedule for comment on submitted Applications.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) - (E) of this paragraph.

(A) Chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has 10% or more ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State; or

(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority.

(C) Evidence that each entity shown on an the organizational chart described in subparagraph (A) of this paragraph that has 10% or more ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Evidence must be a certification from the Department for each of those Persons required to submit these documents as further described under subsection (e)(3) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification is the appropriate Person appearing in the organizational chart provided in subparagraph (A) of this paragraph.

(D) Evidence that, if the Development Owner or any of its Affiliates shown on the organizational chart described in subparagraph (A) of this paragraph that have 10% or more ownership interest in the Development Owner have, or have had, ownership or Control of affordable housing, being housing that receives any form of financing and/or assistance from any Governmental Entity for the purpose of enhancing affordability to persons of low or moderate income, outside the state of Texas, that such Persons have submitted the appropriate "National Previous Participation and Background Certification Form" to the Department. Evidence must be a certification from the Department for each of those Persons required to submit these documents as further described under subsection (e)(4) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the

Person whose name is on the certification is the appropriate Person appearing in the organizational chart provided in subparagraph (A) of this paragraph.

(E) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (e)(1) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) - (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement. (2306.6705(a)(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

(D) Occupied Developments undergoing rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph.

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to its inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) the most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) all monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided; and

(II) a rent roll not more than 6 months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (2306.6705(a)(6))

(iii) a relocation plan outlining relocation requirements and a budget with an identified funding source; and (2306.6705(a)(6))

(iv) if applicable, evidence that the relocation plan has been submitted to the appropriate legal agency. (2306.6705(a)(6))

(11) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, must submit all of the documents described in clauses (i) and (ii) of this subparagraph: (2306.6706)

(i) an IRS determination letter which states that the nonprofit organization is a 501(c)(3) or (4) entity; and

(ii) the "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §49.7(b)(1) of this title, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (vi) of this subparagraph.

(i) copy of the page from the articles of incorporation or bylaws indicating that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(ii) copy of the page from the articles of incorporation or bylaws indicating that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(iii) a Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion, and

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member; and otherwise meet the requirements of the Code, §42(h)(5);

(iv) a copy of the nonprofit organization's most recent audited financial statement; and

(v) a certification that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement.

(vi) evidence, in the form of a certification, that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a rural area; or

(II) not more than 90 miles from the Development, if the Development is not located in a rural area.

(12) Applicants applying for acquisition credits, or Applicants and Development Team members affiliated with the seller that are asking for the land value to be an amount greater than the acquisition cost indicated in the original purchase contract, will be evaluated in accordance with §1.32 of this title and must provide all of the documentation described in subparagraphs (A) - (C) of this paragraph. Applicants applying for acquisition credits must also provide the items described in subparagraph (D) of this paragraph and as provided in the Application.

(A) an appraisal, not more than 6 months old as of the first day of the Application Acceptance Period, which complies with the Uniform Standards of Professional Appraisal Practice and §1.34 of this title. For Developments which require an appraisal from TX-USDA-RHS, the appraisal may be more than 6 months old, as long as TX-USDA-RHS has confirmed in writing that the existing appraisal is still acceptable. The appraisal may be submitted as a Supplemental Threshold Report consistent with the timelines and submission documentation requirements identified in paragraph (14)(D) of this subsection.

(B) a current valuation report from the county tax appraisal district;

(C) clear identification of the selling Persons, and any owner of the property within the last 36 months prior to the first day of the Application Acceptance Period, and details of any relationship between said selling Persons and owners and the Applicant, Developer, Property Manager, General Contractor, Qualified Market Analyst, or any other professional or other consultant performing services with respect to the Development. If any such relationship exists, the following documents must be provided:

(i) documentation of the original acquisition cost, such as a settlement statement;

(ii) any other verifiable costs of owning, holding, or improving the property that when added to the value from clause (i) of this subparagraph justifies the Applicant's proposed acquisition amount:

(I) for land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the property, the cost of rezoning, replatting or developing the property, or any costs to provide or improve access to the property;

(II) for transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, a calculated return on equity at a rate consistent with the historical returns of similar risks, and the cost of exit taxes not to exceed an amount necessary to allow the sellers to be indifferent to foreclosure or breakeven transfer; and

(D) "Acquisition of Existing Buildings Form."

(13) Evidence of an "Acknowledgement of Receipt of Financial Statement and Authorization to Release Credit Information" must be provided for any Person that has 10% or more ownership interest in the Development Owner or General Partner, the Developer, or Guarantor, as required under subsection (e)(2) of this section. Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case in lieu of submitting the Acknowledgement.

(14) Supplemental Threshold Reports. Documents under subparagraphs (A) and (B) of this paragraph must be submitted as further stated in subparagraphs (C) and (D) of this paragraph and in accordance with the Market Analysis Rules and Guidelines and Environmental Site Assessment Rules and Guidelines, §1.33 and §1.35 of this title.

(A) A Phase I Environmental Site Assessment (ESA) on the subject Property, dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated no older than three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; The ESA must be prepared in accordance with the Department Environmental Site Assessment Rules and Guidelines. Developments whose funds have been obligated by TX-USDA-RHS will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) A comprehensive Market Analysis prepared at the Applicant's expense by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title. In addition to the document submitted in paper form, an electronic version must also be submitted. The Market Analysis must be prepared in accordance with the methodology prescribed in the Market Analysis Rules and Guidelines, §1.33 of this title. In the event that a Market Analysis on the Development is older than 6 months as of the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period. The Market Analysis should be prepared for and addressed to the Department. For Applications in the TX-USDA-RHS Set-Aside, the appraisal, required under paragraph (12)(A) of this subsection, will satisfy the requirement for a Market Analysis; no additional Market Analysis is required; however the Department may request additional information as needed. (2306.67055 as added Section 21 of 2306) (§42(m)(1))

(i) The Department may determine from time to time that information not required in the Department Market Analysis and Appraisal Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the Qualified Market Analyst to meet this need.

(ii) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the Market Analysis and may substitute its own analysis and

underwriting conclusions for those submitted by the Qualified Market Analyst.

(C) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report.

(D) The requirements for each of the reports identified in subparagraphs (A) and (B) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety as described in subparagraphs (A) and (B) of this paragraph; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 1, 2004. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, April 1, 2004. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form."

(g) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. Maximum Total Points: 195.

(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (2306.6710(b)(1)) Applications may qualify to receive 28 points for this item. Evidence will include the documentation required for this exhibit in addition to the commitment letter required under subsection (f)(7)(C) of this section. The supporting financial data shall include a thirty year pro forma prepared by the permanent or construction lender specifically identifying each of the first ten years and every fifth year thereafter. The pro forma must indicate that the development pro forma maintains a 1.10 debt coverage ratio throughout the initial thirty years proposed. In addition, the commitment letter must state that the lender's assessment finds that the Development will be feasible for thirty years. Points will be awarded if these criteria are met. No partial points will be awarded. For developments receiving financing from TX-USDA-RHS, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" or other form deemed acceptable by the Department shall meet the requirements of this section.

(2) Quantifiable Community Participation from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site. Points will be awarded based on written statements of support or opposition from neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. (§2306.6710(b)(1); §2306.6725(a)(2)). It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under subsection (f)(8)(A)(ii)(I) of this section if the organization provides the information and documentation required below. It is also possible that neighborhood organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring.

(A) Basic Submission Requirements for Scoring. Each neighborhood organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received by the Department no later than April 1, 2005, directly from the neighborhood organization or with the Application. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Neighborhood Input)." Letters received after April 1, 2005 will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

(i) state the name and location of the proposed Development on which input is provided. A letter may provide input on only one proposed Development; if an organization desires to provide input on additional Developments, each Development must be addressed in a separate letter;

(ii) be signed by the chairman of the board, chief executive officer, or comparable head of the organization, and provide the signer's mailing address, phone number, and an e-mail address or facsimile number for the organization;

(iii) establish that the organization has boundaries, state what the boundaries are, and establish that the boundaries contain the proposed development site. A map must be provided with the geographic boundaries of the organization and the proposed Development site clearly marked within those boundaries;

(iv) establish that the organization is a "neighborhood organization." A "neighborhood organization" is defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood organizations" include homeowners associations, property owners associations, and public housing resident councils (for the property occupied by the residents). "Neighborhood organizations" do not include broader based "community" organizations; organizations that have no members other than board members; chambers of commerce; community development corporations; churches; school related organizations; Lions, Rotary, Kiwanis, and similar organizations; Habitat for Humanity; Boys and Girls Clubs; charities; public housing authorities; or any governmental entity. Organizations whose boundaries include an entire county or larger area are not "neighborhood organizations." Organizations whose boundaries include an entire city are generally not "neighborhood organizations."

(v) include documentation showing that the organization is on record as of March 1, 2005 with the state or county in which the Development is proposed to be located. A record from the Secretary of State showing that the organization is incorporated or from the county clerk showing that the organization is on record with the county is sufficient. For a property owners association, a record from the county showing that the organization's management certificate is on record is sufficient. The documentation must be from the state or county and be current. If an organization's status with the Secretary of State at any time during the Application Round is shown as "forfeited," "dissolved," or any similar status, the organization will not be considered on record with the state. It is insufficient to be "on record" to provide only a request to the county or a state entity to be placed on record or to show that the organization has corresponded with such an entity or used its services or programs. It is insufficient to show that

the organization is on record with a city. As an option to be considered on record with the state, a letter including a contact name with a mailing address and phone number; name and position of officers; and a written description and map of the organization's geographical boundaries must be received by the Department no later than March 1, 2005 to place the organization on record with the state. The letter should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Recording of Neighborhood Organization)." Acceptance of this documentation by the Department will satisfy the "on record with the state" requirement, but is not a determination that the organization is a "neighborhood organization" or that other requirements are met.

(vi) accurately state that the neighborhood organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant in the 2005 tax credit Application Round and that the organization and any member did not accept money or a gift to cause the neighborhood organization to take its position of support or opposition.

(vii) state the total number of members of the organization and provide a brief description of the process used to determine the members' position of support or opposition. The organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the developer to this meeting.

(B) Scoring of Letters (and Enclosures). To be scored, the letter (and enclosures) must provide "quantifiable" input. The input must clearly and concisely state each reason for the organization's support for or opposition to the proposed Development.

(i) The score for this exhibit will range from a maximum of +24 for the strongest position of support to +12 for the neutral position to 0 for the strongest position of opposition. The number of points to be allocated to each organization's letter will be recommended by the Executive Award and Review Advisory Committee based on the factual basis of the organization's letter and evidence enclosed with the letter. The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and neighborhood organizations for more information. The Department may consider any relevant information specified in letters from other neighborhood organizations regarding a development in determining a score.

(ii) The Department highly values quality public input addressed to the merits of a Development. Input that points out possible errors in the Department's analysis and matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the neighborhood organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.

(iii) In general, letters that meet the requirements of this paragraph and

(I) establish three or more reasons for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero);

(II) establish two reasons for support or opposition will be scored up to +18 points for support or +6 points for opposition;

(III) establish one reason for support or opposition will be scored +13 points for support or +11 points for opposition;

(IV) that do not establish a reason for support or opposition or that are unclear will be scored as neutral (+12 points).

(iv) Applications for which no letters from neighborhood organizations are scored will receive a neutral score of +12 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the neighborhood organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail address or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within ten business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the April 1, 2005 deadline except in response to an e-mail or facsimile from the Department specifically requesting additional information.

(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (C) of this paragraph. To qualify for these points, the tenant incomes must not be higher than permitted by the AMGI level. The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require rent levels that do not exceed 30% of the income limitation in accordance with §42(g). (2306.6710(b)(1)(C); 2306.111(g)(3)(B); 2306.6710(e); 42(m)(1)(B)(ii)(I); 2306.111(g)(3)(E))

(A) 22 points if at least 80% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 10% of the Total Units in the Development are set-aside with incomes at or below 30% of AMGI; or

(C) 18 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI.

(4) The Size and Quality of the Units (Development Characteristics). Applications may qualify to receive up to 20 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (2306.6710(b)(1)(D); 2306.6725(b)(1); 42(m)(1)(C)))

(A) Size of the Units. Applications may qualify to receive 6 points. The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving rehabilitation, Developments receiving funding from TX-USDA-RHS, or Developments proposing single room occupancy without meeting these square footage minimums. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted below.

(i) 500 square feet for an efficiency unit;

(ii) 650 square feet for a non-elderly one bedroom unit; 550 square feet for an elderly one bedroom unit;

(iii) 900 square feet for a non-elderly two bedroom unit; 750 square feet for an elderly two bedroom unit;

(iv) 1,000 square feet for a three bedroom unit; and

(v) 1,200 square feet for a four bedroom unit.

(B) Quality of the Units. Applications may qualify to receive up to 14 points. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xix) of this subparagraph, not to exceed 14 points in total. Applications involving rehabilitation or single room occupancy may double the points listed for each item, not to exceed 14 points in total.

(i) Covered entries (1 point);

(ii) Nine foot ceilings (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Ceiling fixtures in all rooms (light with ceiling fan in all bedrooms) (1 point);

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (2 points);

(viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets--does not need to be in the Unit but must be on the property site (1 point);

(ix) Laundry equipment (washers and dryers) for each individual unit (3 points);

(x) Thirty year architectural shingle roofing (1 point);

(xi) Covered patios or covered balconies (1 point);

(xii) Covered parking (including garages) of at least one covered space per Unit (2 points);

(xiii) 100% masonry on exterior, which can include stucco and cementitious board products, excluding EFIS (3 points);

(xiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, excluding EFIS (1 points);

(xv) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points).

(xvi) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);

(xvii) 14 SEER HVAC or evaporative coolers in dry climates (3 points); (WG)

(xviii) Energy Star or equivalently rated kitchen appliances (2 points); or

(xix) High Speed Internet service to all Units at no cost to residents (2 points).

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under only one of subparagraph (A) or (B) of this paragraph. (2306.6710(b)(1)(E))

(A) Evidence that the proposed Development has received an allocation of funds for on-site development costs from a local political subdivision. In addition to loans or grants, 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. The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment for the sufficient local funding to the Department. If the funding commitment from the local political subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the local political subdivision's funds, the Commitment Notice will be rescinded and the credits reallocated. Use normal rounding. No funds from TDHCA's HOME (with the exception of Developments located in non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category.

(i) A contribution of $500 to $1,000 per Low Income Unit receives 6 points; or

(ii) A contribution of $1,001 to $3,500 per Low Income Unit receives 12 points; or

(iii) A contribution of $3,501 or more per Low Income Unit receives 18 points; or

(B) Evidence that the proposed Development will receive development-based Housing Choice or rental assistance vouchers from a local political subdivision for a minimum of five years. 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. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment for the vouchers to the Department. If the funding commitment from the local political subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss

of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the local political subdivision's funds, the Commitment Notice will be rescinded and the credits reallocated. No funds from the Department's HOME (with the exception of Developments located in non-Participating Jurisdictions) or Housing Trust Fund sources will qualify under this category. Use normal rounding. HUD must approve the vouchers no later than the time the 10% Test Documentation is submitted to the Department or the Commitment will be rescinded.

(i) Development-Based Vouchers for 3% to 5% of the total Units receives 6 points; or

(ii) Development-Based Vouchers for 6% to 8% of the total Units receives 12 points; or

(iii) Development-Based Vouchers for 9% or more of the total Units receives 18 points.

(6) The Level of Community Support from State Elected Officials. The level of community support for the application, evaluated on the basis of written statements from state elected officials. (2306.6710(b)(1)(F); 2306.6725(a)(2)) Applications may qualify to receive up to 14 points for this item. Points will be awarded based on the written statements of support or opposition from state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official by April 1, 2005. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are 7 points each for a maximum of 14 points; opposition letters are -7 points each for a maximum of -14 points.

(7) The Rent Levels of the Units. Applications may qualify to receive 12 points for qualifying under this exhibit. (2306.6710(b)(1)(G)) Applicants will be eligible for the points by committing to make all low income rents 10% less than the maximum tax credit rents for the income level specified in the Rent Schedule. The calculation for these points will be made based on the figures provided in the Rent Schedule submitted with the Application. All representations made will be included in the LURA. To determine the rent level to be used for any 30% set aside category, the higher of Area Median Gross Income or the statewide Median Gross Income for non-metropolitan areas may be utilized, as long as the statewide Median Gross Income for non-metropolitan areas does not exceed the Applicant's minimum, required set-aside and maximum rent level (for example, if an Applicant selects a minimum set-aside of 20% of the Units at 50% of Area Median Gross Income, the statewide Median Gross Income for the 30% set aside can be used only if it does not exceed 50% of local Area Median Gross Income).

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (2306.6710(b)(1)(H); 42(m)(1)(C)) For this exhibit, costs shall be defined as construction costs, including site work, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $73 per square foot for Qualified Elderly and Transitional Developments and $64 for all other Developments. (10 points)

(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (2306.6710(b)(1)(I); 2306.254; 2306.6725(a)(1); Rider 6 of Appropriations)

(A) Applicants will receive points for coordinating their tenant services with those services provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

(B) The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this subparagraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

(I) Two points will be awarded for providing one of the services; or

(II) Four points will be awarded for providing two of the services; or

(III) Six points will be awarded for providing three of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; any services addressed by §2306.254 Texas Government Code; or any other services approved in writing by the Department.

(10) Housing Needs Characteristics. (42(m)(1)(C)(ii)) Applications may qualify to receive up to 7 points. Each Application, based on the place or county where the Development is located, will receive a score based on the Uniform Housing Needs Scoring Component. If a Development is in a place, the place score will be used. If a Development is not within a place, then the county score will be used. The Uniform Housing Needs Scoring Component scores for each place and county will be published in the Reference Manual.

(11) Development Includes the Use of Existing Housing as part of a Community Revitalization Plan (Development Characteristics). Applications may qualify to receive 7 point for this item. (42(m)(1)(C)(iii)) The Development is an existing Residential Development and the proposed rehabilitation is part of a community revitalization plan.

(12) Pre-Application Participation Incentive Points. (2306.6704) Applications which submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) be for the identical site as the proposed Development in the Pre-Application;

(B) have met the Pre-Application Threshold Criteria;

(C) be serving the same target population (family, elderly, and transitional) as in the Pre-Application;

(D) be serving the same target Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and

(E) be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2) and (6) of this subsection. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) to request the Pre-Application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from Pre-Application to Application; or

(ii) to request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(13) Development Location. (2306.6725(a)(4) and (b)(2); 2306.127; 42(m)(1)(C)(i); 42 U.S.C. 3608(d) and (e)(5)) Applications may qualify to receive 4 points. 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) - (H) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (H) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A) - (H) of this paragraph.

(A) A geographical area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD.

(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 or county-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 or county-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 created by the local city council/county commission, and 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 which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the median family for the county in which the census tract is located. This comparison shall be made using the most recent data available as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county.

(E) the Development is located in a census tract in which there are no other existing developments supported by housing tax credits. Applicant must provide evidence. (2306.6725(b)(2))

(F) the Development is located in a county that has received an award as of November 15, 2004, 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) That the proposed Development will serve families with children (at least 70% of the Units must have two bedrooms or more) and is proposed to be located in an elementary school attendance zone of an elementary school that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (42(m)(1)(C)(vii))

(H) That the proposed Development will expand affordable housing opportunities for low income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. (42(m)(1)(C)(vii))

(14) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (42(m)(1)(C)(v)) Evidence that the Development is designated 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) - (E) of this paragraph must be submitted. If all Units in the Development are designed solely for transitional housing for homeless persons, 4 points will be awarded.

(A) a detailed narrative describing the type of proposed housing;

(B) a referral agreement, not more than 12 months old from the first day of the Application Acceptance Period, with an established organization which provides services to the homeless;

(C) a marketing plan designed to attract qualified tenants and housing providers;

(D) a list of supportive services; and

(E) adequate additional income source to supplement any anticipated operating and funding gaps.

(15) Length of Affordability Period. Applications may qualify to receive up to 4 points. (2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1); 2306.6710(e)(2); 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (2 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (4 points)

(16) Site Characteristics. Sites will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria below.

(A) Proximity of site to amenities. Developments located on sites within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive four points. A site located within one-quarter mile of public transportation or located within a community that has "on demand" transportation, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Qualified Elderly Development is providing its own specialized van service, then this will be a requirement of the LURA. Only one service of each type listed below will count towards the points. A map must be included identifying the development site and the location of the services, as well as written directions from the site to each service. The services must be identified by name on the map and in the written directions. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (4 points)

(i) Full service grocery store or supermarket

(ii) Pharmacy

(iii) Convenience Store/Mini-market

(iv) Department or Retail Merchandise Store

(v) Bank/Credit Union

(vi) Restaurant (including fast food)

(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries

(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools

(ix) Hospital/medical clinic

(x) Doctor's offices (medical, dentistry, optometry)

(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments)

(xii) Senior Center (only eligible for Qualified Elderly Developments)

(B) Negative Site Features. Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development site. The distances are to be measured from all boundaries of the Development site. Applicants must indicate on a map the location of any negative site feature, with the exception of slope which must be documented with an engineer's certificate to ensure that points are not deducted. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-6 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score. Rural Developments funded through TX-USDA-RHS are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of an Interstate Highway including frontage and service roads will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(v) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(vi) Developments located adjacent to or within 100 feet of high voltage transmission power lines will have 1 point deducted from their score.

(17) Qualified Census Tracts with Revitalization. Applications may qualify to receive 2 points for this item. (42(m)(1)(B)(ii)(III)) Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted community revitalization plan. Evidence of the community revitalization plan must be provided.

(18) Sponsor Characteristics. Applications may qualify to receive 2 points for this item. (42(m)(1)(C)(iv)) Evidence that a HUB, as certified by the Texas Building and Procurement Commission, has at least 51% ownership interest in and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period and has been a HUB for at least five years from the date the Application Cycle opens.

(19) Projects Intended for Eventual Tenant Ownership--Right of First Refusal. Applications may qualify to receive 1 point for this item. (2306.6725(b)(1)) (42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a

tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) the Development Owner's determination to sell the Development, or

(ii) the Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department,

(ii) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) the end of the Compliance Period; or

(ii) two years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(20) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (2306.6725(a)(3)) Evidence that the proposed Development has received an allocation of private, state or federal resources, including HOPE VI funds, that is equal to or greater than 2% of the Total Development costs reflected in the Application. The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment for the sufficient financing to the Department. If the funding commitment from the private, state or federal source has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Use normal rounding. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a NOFA out for available funds and the Applicant is eligible under that NOFA.

(21) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (2306.6710(e)(1)) Evidence that the proposed Development has documented and committed third-party funding sources and the Development is located outside of a Qualified Census Tract. The commitment of funds must already have been received from the third-party funding source and must be equal to or greater than 2% of the Total Development costs reflected in the Application. Use normal rounding.

Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category.

(22) Scoring Criteria Imposing Penalties. (2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of a Department deadline, and did not meet the original submission deadline, relating to developments receiving a housing tax credit commitment made in the application round preceding the current round. The extension that will receive a penalty is an extension related to the submission of the carryover. For each extension request made, the Applicant will receive a 5 point deduction for not meeting the Carryover deadline. Subsequent extension requests after the first extension request made for each development from the preceding round will not result in a further point reduction than already described. No penalty points or fees will be deducted for extensions that were requested on Developments that involved rehabilitation when the Department is the primary lender, or for Developments that involve TX-USDA-RHS as a lender if TX-USDA-RHS or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(h) Breaker Factors. (2306.185(a)(1) and (b))

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban/Exurban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) An Application will have preference if the Development Owner certifies that it will cooperate with the local public housing authority in accepting tenants from their waiting lists.

(B) The amount of requested tax credits per net rentable square foot requested (the lower credits per square foot has preference).

(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §49.5(a)(8) of this title, and in dealing with any issues relating to capture rate calculation. When two Tax Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the lot number issued during the Bond Review Board lottery in making its determination. When two competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax Exempt Bond Development and a competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax Exempt Bond Developments that receive their reservation from the Bond Review Board prior to April 30, 2005 will take precedence over the Housing Tax Credit Applications in the 2005 Application Round; and

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2005 will take precedence over the Tax Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2005 and July 31, 2005; and

(C) After July 31, 2004, a Tax Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2005 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2005 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(i) Staff Recommendations. (2306.1112 and 2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all evaluation factors provided in subsection (g) of this section that were used in making this determination.

§49.10. Board Decisions; Waiting List; Forward Commitments.

(a) Board Decisions. The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and Rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (2306.6725(c); 42(m)(1)(A)(iv); 2306.6731)

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (2306.111(g)(3))

(A) the developer market study;

(B) the location;

(C) the compliance history of the Developer;

(D) the Applicant and/or Developer's efforts to engage the neighborhood;

(E) the financial feasibility;

(F) the appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(G) the housing needs of the community, area, region and state;

(H) the Development's proximity to other low income housing developments;

(I) the availability of adequate public facilities and services;

(J) the anticipated impact on local school districts;

(K) zoning and other land use considerations;

(L) laws relating to fair housing including affirmatively furthering fair housing;

(M) the efficient use of the tax credits;

(N) consistency with local needs, including consideration of revitalization or preservation needs;

(O) the allocation of credits among many different entities without diminishing the quality of the housing;

(P) meeting a compelling housing need;

(Q) providing integrated, affordable housing for individuals and families with different levels of income;

(R) the inclusive capture rate as described under §1.32(g)(2) of this title;

(S) any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes and the policies of Chapter 2306, Texas Government Code; or

(T) other good cause as determined by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (2306.057)

(b) Waiting List. (2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Forward Commitments. The Board may determine to issue commitments of tax credit authority with respect to Developments from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to TX-USDA-RHS Developments which are experiencing foreclosure or loan acceleration at any time during the 2005 calendar year. Applications that are submitted under the 2005 QAP and granted a Forward Commitment of 2006 Housing Tax Credits are considered by the Board to comply with the 2006 QAP by having satisfied the requirements of this 2005 QAP, except for statutorily required QAP changes.

(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

(a) Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.

(1) Within approximately seven business days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, Set-Aside, number of units, requested credits, owner contact name and phone number. (2306.6717(a)(1))

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (2306.1114)

(A) publish an Application submission log on its web site.

(B) give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) - (viii) of this subparagraph. (2306.6718(a) - (c))

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the governing body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development. If the presiding officer of the governing body expresses opposition to the Development, the Department will give consideration to the objections raised and will visit the proposed site or Development within 30 days of notification to conduct a physical inspection of the Development site and consult with the presiding officer of the governing body before the Application is scored, if opposition is received prior to scoring being completed. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate (Rider 4 of Appropriations Bill) (§42(m)(1));

(iii) Any member of the governing body of a political subdivision who represents the area containing the Development. If the governing body has single-member districts, then only that member of the governing body for that district will be notified, however if the governing body has at-large districts, then all members of the governing body will be notified;

(iv) state representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator hold a community meeting, the Department shall provide appropriate representation.

(v) United States representative who represents the community containing the Development;

(vi) Superintendent of the school district containing the Development;

(vii) Presiding officer of the board of trustees of the school district containing the Development;

(viii) Any Neighborhood Organizations on record with the city or county in which the Development is to be located and whose boundaries contain the proposed Development site, based on the letters obtained by the Applicant under §49.9(f) of this title or otherwise known to the Applicant or Department and on record with the state or county; and

(ix) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's email list service.

(C) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))

(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program. (2306.6717(c))

(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (2306.6717(b); 2306.6732)

(6) Approximately forty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. (2306.6717(a)(3))

(8) At least 30 days prior to the date of the July Board meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed, the Department will:

(A) provide the Application scores to the Board;

(B) if feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §49.19(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (2306.6711(a) and 2306.6717(a)(2))

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for housing tax credits, the Department shall provide an Applicant who did not receive a commitment for housing tax credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (2306.6711(e))

(b) Viewing of Pre-Applications and Applications. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) Confidential Information. The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code. (2306.6717(d))

§49.12. Tax Exempt Bond Developments: Filing of Applications, Applicability of Rules, Supportive Services, Financial Feasibility Evaluation, Satisfaction of Requirements.

(a) Filing of Applications for Tax Exempt Bond Developments. Applications for a Tax Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2005 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 5:00 p.m. on December 30, 2004. Such filing must be accompanied by the Application fee described in §49.20 of this title.

(2) Applicants which receive advance notice of a Program Year 2005 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §49.20 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Any outstanding documentation required under this section must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

(b) Applicability of Rules for Tax Exempt Bond Developments. Tax Exempt Bond Development Applications are subject to all rules in this title, with the only exceptions being the following sections: §49.4 of this title (regarding State Housing Credit Ceiling), §49.7 of this title (regarding Regional Allocation and Set-Asides), §49.8 of this title (regarding Pre-Application), §49.9(d) of this title (regarding Review and Prioritization), §49.9(g) of this title (regarding Selection Criteria), §49.10(b) and (c) of this title (regarding Waiting List and Forward Commitments), and §49.14(a) and (b) of this title (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §49.9(f) of this title. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Consistency with the local municipality's consolidated plan or similar planning document must be demonstrated in those instances where the city or county has a consolidated plan. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §49.15(a) of this title. Applications that receive a reservation from the Bond Review Board on or before December 31, 2004 will be required to satisfy the requirements of the 2004 QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, 2005 will be required to satisfy the requirements of the 2005 QAP.

(c) Supportive Services for Tax Exempt Bond Developments. (2306.254) Tax Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) - (3) of this subsection include:

(1) the services must be in at least one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities; or

(2) any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(3) any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) Financial Feasibility Evaluation for Tax Exempt Bond Developments. Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure that a Tax Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to

the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) Satisfaction of Requirements for Tax Exempt Bond Developments. If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §49.10(a) of this title in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

§49.13. Commitment and Determination Notices; Agreement and Election Statement.

(a) Commitment and Determination Notices. If the Board approves an Application, the Department will:

(1) if the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

(A) confirm that the Board has approved the Application; and

(B) state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described at §49.16 of this title, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §49.20 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting an extension request and associated extension fee as described in §49.20 of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(2) if the Application regards a Tax Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth at §49.12 of this title and compliance by the Development Owner with all applicable requirements of this title and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.20 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

(3) Notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low income rental housing properties in the state of Texas administered by the Department, or outside the state of Texas, that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property, as described in §60.1 of this title.

(b) Agreement and Election Statement. Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation was accepted (or the month the bonds were issued for Tax Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable, to assure that the Carryover Allocation Document can be so executed.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment Fee as further described in §49.20(f) of this title, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment to be rescinded. Organizational Documents. For each Applicant all of the following must be provided:

(1) Evidence that the entity has the authority to do business in Texas;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State;

(3) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement; and

(4) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents.

§49.14. Carryover, 10% Test, Commencement of Substantial Construction.

(a) Carryover. All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the

Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued. Developments involving acquisition/rehabilitation must submit the Carryover documentation to the Department no later than December 1 of the year in which the Commitment Notice is issued, however they will be ineligible for extensions beyond that date. Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month. If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department. The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All Carryover Allocations will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) The Development Owner must have purchased the property for the Development.

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) Attendance of the Development Owner and Development architect at Department-approved Fair Housing training on or before the time the 10% Test Documentation is submitted

(4) For all Developments involving new construction, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(5) Development Owners must provide evidence to the Department that they have notified the District office of the Texas Department of Transportation of their proposed property consistent with the template provided in the Carryover Allocation Procedures Manual.

(b) 10% Test. No later than six months from the effective date of the Carryover Allocation Document, which will be defined in the Carryover Allocation Document as December 31 of the year of the Housing Credit Allocation, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than June 30 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department.

(c) Commencement of Substantial Construction. The Development Owner must submit evidence of having commenced and continued substantial construction activities. The evidence must be submitted not later than December 1 of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.20 of this title. The minimum activity necessary to meet the requirement of the substantial construction for new Developments will be defined as having expended 10% of the construction contract amount for the Development, adjusted for any change orders, and as documented by both the most recent construction contract application for payment and the inspecting architect. The minimum activity necessary to meet the requirement of substantial construction for rehabilitation Development will be defined as having expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

§49.15. Cost Certification, LURA.

(a) Cost Certification. If a Carryover Allocation was not requested and received, Developments must be placed in service by December 31 of the year the Commitment Notice was issued. Developments receiving a Carryover Allocation must be placed in service by December 31 of the second year following the year the Carryover Allocation Agreement was executed. Developments requesting IRS Forms 8609 must submit the required Cost Certification documentation no later than April 1 of the year following the date the buildings were placed in service. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this time will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.20(l) of this title. The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt of the Cost Certification documentation and notify the Owner in a deficiency letter of all additional required documentation. Once the Department has determined that all required documents have been received, the Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of those final documents. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. At the time the Cost Certification documentation is provided, a title policy or 'nothing further certificate' must be provided dated on or after the date of substantial completion.

(b) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than the date specified in §60.1(p)(6), the Department's Compliance Monitoring Policies and Procedures. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution by December 1 of the first year in which credits will be claimed. The initial compliance and monitoring fee must be accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain

in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA.

§49.16. Housing Credit Allocations.

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Development Owner who receives a Housing Credit Allocation from the Department will qualify for the housing credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (2306.6711(b)) Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the Seventy-Fifth Legislature. A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §49.9(f)(4)(H) of this title, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §49.17(c) of this title. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.20 of this title have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accredited accessibility inspector to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to required plans and specifications. At a minimum, all Development inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.20 of this title. For properties receiving financing through TX-USDA-RHS, the Department shall accept the inspections

performed by TX-USDA-RHS in lieu of having other Third party Inspections. (2306.081)

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §49.15 of this title, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. The Department may also consider an amendment to a Commitment Notice or Carryover Allocation or other requirement with respect to a Development if the revisions:

(1) are consistent with the Code and the Housing Tax Credit Program;

(2) do not occur while the Development is under consideration for tax credits;

(3) do not involve a change in the number of points scored (unless the Development's ranking is adjusted because of such change);

(4) do not involve a change in the Development's site; or

(5) do not involve a change in the set-aside election.

§49.17. Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Sale of Tax Credit Properties, Withdrawals, Cancellations.

(a) Board Reevaluation. (2306.6731(b)) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (c)(3) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Appeals Process. (2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A) - (C) of this paragraph.

(A) a determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-Application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) the scoring of the Application under the Application Selection Criteria; and

(C) a recommendation as to the amount of housing tax credits to be allocated to the Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.9 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) the seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) the third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (2306.6717(a)(5))

(c) Amendment of Application Subsequent to Allocation by Board. (2306.6712 and 2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §49.18 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment.

(3) For Applications approved by the Board prior to September 1, 2001, the Executive Director will approve or deny the amendment request. For Applications approved by the Board after September 1, 2001, the Board must vote on whether to approve the amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent;

(G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

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

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the original Application, the following procedure will apply. For amendments that involve a reduction in the total number of low income Units being served, or a reduction in the number of low income Units at any level of AMGI represented at the time of Application, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request, however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (4% or 9%) for 24 months from the time that the amendment is approved.

(d) Housing Tax Credit and Ownership Transfers. (2306.6713) A Development Owner may not transfer an allocation of housing tax credits or ownership of a Development supported with an allocation of housing tax credits to any Person other than an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in §49.6(d) of this title, the credit cap will not be applied in the following circumstances:

(A) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) in cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(e) Sale of Certain Tax Credit Properties. Consistent with §6.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §6.6725, Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) during the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the federal home investment partnership program;

(B) during the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) during the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §49.9(g) of this title, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)), and the Department declines to purchase the Development.

(f) Withdrawals. An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(g) Cancellations. The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

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

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §49.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

(h) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. 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 §1.17 of this title.

§49.18. Compliance Monitoring and Material Non-Compliance.

The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Department Rule §60.1 of this title.

§49.19. Department Records, Application Log, IRS Filings.

(a) Department Records. At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) the cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Application Log. (2306.6702(a)(3) and 2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) the names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) the name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

(3) the number of Units and the amount of housing tax credits requested for allocation by the Department to the Applicant;

(4) any Set-Aside category under which the Application is filed;

(5) the requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;

(7) the names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) the amount of housing tax credits allocated to the Development; and

(9) a dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) IRS Filings. The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low Income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or delivered to the Development Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence in this subsection. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a Housing Credit Allocation is made as provided in this section. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§49.20. Program Fees, Refunds, Public Information Requests, Amendments of Fees and Notification of Fees, Extensions.

(a) Timely Payment of Fees. All fees must be paid as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, commitment or allocation to be terminated.

(b) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee.

(c) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (2306.6716(d))

(d) Refunds of Pre-Application or Application Fees. (2306.6716(c)) The Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 30% of the review, the site visit will constitute 45% of the review, and Threshold and Selection review will constitute 25% of the review. The Department must provide the refund to the Applicant not later than the 30th day after the date the last official action is taken with respect to the Application.

(e) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §49.9(d)(6) of this title if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the commitment fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment notice, a non-refundable commitment fee equal to 5% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check.

(g) Compliance Monitoring Fee. Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of Form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the beginning month of the compliance period.

(h) Building Inspection Fee. The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development. Developments receiving financing through TX-USDA-RHS that will not have construction inspections performed through the Department will be exempt from the payment of an inspection fee.

(i) Tax Exempt Bond Credit Increase Request Fee. As further described in §49.12(d) of this title, requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax Exempt Bond Developments must be submitted with a request fee equal to one percent of the first year's credit amount.

(j) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Texas Building and Procurement Commission (formerly General Services Commission) determines the cost of copying, and other costs of production.

(k) Periodic Adjustment of Fees by the Department and Notification of Fees. (2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the

Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) Extension Requests. All extension requests relating to the Commitment Notice, Carryover, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested and will not be accepted any later than this deadline date. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609. The Board may waive related fees for good cause.

§49.21. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or for hand delivery or courier to 507 Sabine, Suite 400, Austin, Texas 78701. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§49.22. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§49.23. Deadlines for Allocation of Housing Tax Credits (2306.6724).

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (2306.67022) (§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for housing tax credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than September 30. Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

This agency hereby certifies that the 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 September 13, 2004.

TRD-200405637
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-4595

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CHAPTER 51. HOUSING TRUST FUND RULES

10 TAC §§51.3, 51.4, 51.6 - 51.11

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §§51.3, 51.4, 51.6 - 51.11, the rules that govern the Housing Trust Fund (HTF). The amendments to this chapter are proposed to improve the

operation of the program and improve consistency with other Department rules.

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

Ms. Carrington has also determined that for the first five-year period the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to allow for more meaningful public input to the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public hearings will be held across the state between September 27 and October 8, 2004 to receive input on this proposed rule amendment. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. Comments on the proposal may be submitted to Mr. David Danenfelzer, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, david.danenfelzer@tdhca.state.tx.us, or by fax (512) 475-0764 within thirty days of this notice.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

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

§51.3. Definitions.

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

(1) Administrative Deficiencies--The absence of information or a document from the Application which is important to a review and scoring of the Application as required in this rule.

[~~(2) Affordable Housing--Housing for which low, very low, and extremely low income families are not required to pay more than 30% of an area's median income.~~]

(2) [~~(3)~~]Applicant--An eligible entity which is preparing to submit or has submitted an application for Housing Trust Fund assistance and is assuming contractual liability and legal responsibility by executing the written agreement with the Department.

(3) [~~(4)~~]Board--The governing board of the Department.

(4) [~~(5)~~]Capacity Building--Educational and organizational support assistance to promote the ability of community housing development organizations and nonprofit organizations to maintain, rehabilitate and construct housing for low, very low, and extremely low-income [~~low income~~] persons and families. This activity may include [~~but is not limited to~~]:

(A) organizational support to cover expenses for housing development or management related training, technical and other assistance to the board of directors, staff, and members of the nonprofit organizations or community housing development organizations;

(B) technical assistance and training related to housing development, housing management, or other subjects related to the provision of housing or housing services; or

(C) studies and analyses of housing needs.

(5) [~~(6)~~]Community Housing Development Organizations--A nonprofit organization that satisfies the requirements of §[~~Section~~] 53.63 of this title.

(6) Competitive Application Cycle--A Notice of Funding Availability that has a fixed deadline by which applications must be submitted. Applications will be reviewed for threshold and scoring criteria in accordance with the rules for application review published in the Notice of Funding Availability (NOFA).

(7) Department--The Texas Department of Housing and Community Affairs.

(8) Eligible Applicants--Local units of government, public housing authorities, community housing development organizations, nonprofit organizations, for profit entities, and persons and families of low, very low, and extremely low income.

(9) Extremely Low Income--Families whose annual incomes do not exceed 30% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size. [~~In accordance with Rider 3, and published by the Department, those counties where the median family income is lower than the state average median family income, applicants targeting households at or below 30% of the median income of the area may use the average state median family income based on number of persons in a household.~~]

(10) Housing Development Costs--The total of all costs incurred, or to be incurred, by the Development Owner in acquiring, constructing, rehabilitating and financing a Development as determined by the Department based on the information contained in the Applicant's application. Such costs include reserves and any expenses attributable to commercial areas.

(11) Housing Development--Any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards consistent with those prescribed in the Housing Trust Fund Property Standards, found in the Program Guidelines, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by persons and families of low, very low, and extremely low income, and persons with special needs. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, 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.

(12) HUD--The United States Department of Housing and Urban Development, or its successor.

(13) Local Units of Government--A county; an incorporated municipality; a special district; a council of governments; any other legally constituted political subdivision of the state; a public, nonprofit housing finance corporation created under the Local Government Code, Chapter 394; or a combination of any of the entities described here.

(14) Low-Income [~~Low Income~~] Persons and Families--Families whose annual incomes do not exceed 80% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(15) Nonprofit Organization--Any public or private, nonprofit organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and [tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code of 1986, Section 501(c), as amended.]

(D) A private nonprofit organization's pending application for 501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement.

(16) NOFA--Notice of Funding Availability, published in the Texas Register.

(17) Open Application Cycle--A Notice of Funding Availability that does not have a fixed deadline by which applications must be submitted. Applications will be reviewed in accordance with the rules for application review published in the NOFA.

(18) [(17)]Person with Special Needs--

(A) persons with disabilities, persons with alcohol or other drug addictions, persons with HIV/AIDS and their families, the elderly, victims of domestic violence, persons living in Colonias, and migrant farm workers, any of whom also meets the income guidelines of a person of low, very low or extremely low income. [; and]

(B) Housing Trust Funds may also be awarded through persons legally responsible for caring for an individual described by subparagraph (A) of this paragraph. [any persons legally responsible for caring for an individual described by subparagraph (A) and meets the income guidelines of a person of low, very low or extremely low income.]

(19) [(18)] Public Agency--A branch of National, State or Local Government.

(20) [(19)] Public Housing Authority--A housing authority established under the Texas Local Government Code, Chapter 392.

(21) [(20)] Recipient--Community housing development organization, nonprofit organization, for profit entity, local unit of government, or public housing authority that is approved by the Department to receive and administer housing trust funds in accordance with these rules.

(22) [(21)] Rental Housing Development--A project for the acquisition, new construction, reconstruction or rehabilitation of multifamily or single family rental housing, or conversion of commercial property to rental housing.

(23) [(22)] Rural Project--An area that is located:

(A) outside the boundaries of a PMSA or MSA; or

(B) within the boundaries of a PMSA or MSA area, if the statistical area has a population of not more than 20,000, and does not share boundaries with an urbanized area; or

(C) in an area that is eligible for new construction or rehabilitation funding by TX-USDA-RHS.

(24) [(23)] State--The State of Texas.

(25) [(24)] Statute--Texas Government Code 2306.

(26) [(25)] Very low Income Persons and Families--Families whose annual incomes do not exceed 60% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

§51.4. Allocation of Housing Trust Funds.

(a) Funds shall be allocated to achieve broad geographic dispersion by awarding funds in accordance with §[Section] 2306.111(d) and [through] (g), Texas Government Code.

(b) The Department shall utilize its best efforts to target housing trust funds allocated each fiscal year to housing assistance for individuals and families earning less than 60% of median family income.

(c) Bond indenture requirements governing expenditure of bond proceeds deposited in the housing trust fund shall govern and prevail over all other allocation requirements established in this section. However, the Department shall distribute these funds in accordance with the requirements of this section to the extent possible.

§51.6. Ineligible Activities and Restrictions.

(a) Displacement of Existing Affordable Housing. Housing Trust Funds shall not be utilized on a development that has the effect of permanently displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses as permitted under Chapter 2306 of the Texas Government Code and this title. [Residents of a development to be rehabilitated by Housing Trust Funds must be provided the opportunity to lease and occupy a comparable affordable dwelling unit in the development upon completion of the development. The landlord must provide all persons and families affected by the rehabilitation with:]

[(1) Notice in writing within a reasonable time indicating the right to remain in the dwelling unit or the need to relocate; and]

[(2) payment of the costs of temporary relocation, including moving costs and any increase in rent.]

(b) If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

(c) Restrictions on Communication.

(1) The Applicant or other person that is active in the ownership or control of the proposed activity, or individual employed as a lobbyist or in another capacity on behalf of the application, may not communicate with any Board member with respect to the application during the period of time starting with the time an application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

(2) Applicants are restricted from communication with Department staff as described in this subsection. The Applicant or other person that is active in the ownership or control of the Development, or individual employed as a lobbyist or in another capacity on behalf of the application, may communicate with an employee of the Department with respect to the Development so long as that communication satisfies the conditions established under subparagraphs (A) through (E) of this paragraph. Communication with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(A) The communication must be restricted to technical or administrative matters directly affecting the Application;

(B) The communication must occur or be received on the premises of the Department during established business hours;

(C) Communication with the Executive Director, the Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Single Family Finance Production, the Director of Portfolio Management and Compliance, and the Director of Real Estate Analysis of the Department must only be in written form which includes electronic communication through the Internet;

(D) Communication with other Department staff may be oral or in written form which includes electronic communication through the Internet; and

(E) A record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication.

(d) Ineligible Applicants: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

(1) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(2) Applicants who have not satisfied all threshold requirements described in this title, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

(3) Applicants who have submitted incomplete applications;

(4) Applicants that have been otherwise barred by the Department;

(5) Applicant or developer, or their staff, who [that] violate the state revolving door policy; and [.]

(6) Any applicant who would otherwise be considered ineligible under §49.5 of this title.

(e) The Department will not recommend an application for funding if it includes a principal who is or has been:

(1) Barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

(2) The subject of enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with a state or federal agency or another governmental entity; [or]

(3) If the applicant has unresolved compliance or audit findings related to previous or current funding agreements with the Department; or [.]

(4) Has breached a contract with a public agency.

(f) Material Noncompliance. Each Application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applications found to be in Material Noncompliance, [or otherwise violating the compliance rules of the Department,] will be terminated.

(g) Rental Housing Development Site and Development Restrictions. Restrictions include all those items referred to in §49.6 of this title and any additional items included in the NOFA for rental housing developments. [The following restrictions apply to Rental Housing Developments only.]

[(1) Floodplain. Any Development proposing new construction located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No Developments proposing rehabilitation will be permitted in the 100 year floodplain unless they already are constructed in accordance with the policy stated above for new construction or are able to provide evidence of flood insurance on the buildings and the contents of the units.]

[(2) Ineligible Building Types. Applications involving Ineligible Building Types will not be eligible for an award. Those buildings or facilities which are ineligible are as follows:]

[(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units) are ineligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible if the Development involves the conversion of the building to a non-transient multifamily residential development.]

[(B) Any elderly development of two stories or more that does not include elevator service for any Units or living space above the first floor.]

[(C) Any elderly development with any units having more than two bedrooms.]

[(D) Any Development with building(s) with four or more stories that does not include an elevator.]

[(E) Any Development proposing new construction, other than a Development (new construction or rehabilitation) composed entirely of single-family dwellings, having any Units with four or more bedrooms.]

(h) [(3)] Limitations on the Size of Developments. Developments involving new construction will be limited to 252 [250] Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units under all Development programs.

[(4) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.]

§51.7. Application Procedure and Requirements.

(a) In distributing funds, the Department will release a NOFA and/or request for proposals that identifies the uses of the available funds and the specific criteria that will be utilized in evaluating applicants.

(b) Applicants must submit a complete application to be considered for funding, along with an application fee determined by the Department and outlined in the NOFA. Applications containing false information will be disqualified. Applications submitted under a Competitive Application Cycle must be received by the application deadline

or they will be disqualified. Disqualified Applicants will be notified in writing. All applications must be received by the Department by 5:00 p.m. regardless of method of delivery. [Applications containing false information and Applications not received by the deadline will be disqualified. Disqualified applicants are notified in writing. All Applications must be received by the Department by 5:00 p.m. on the date identified in the NOFA, regardless of method of delivery.]

(c) Applications received by the Department in response to an Open Application Cycle NOFA for housing development activities will be handled in the following manner.

(1) The Department will accept applications on an ongoing basis, until such date when the Department makes notice to the public that the Open Application Cycle has been closed. All applications must be received during business hours and no later than 5:00 p.m. on any business day. The Department may limit the eligibility of applications in the NOFA.

(2) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review.

(A) Phase One will begin as of the received date. Applications not being considered as CHDOs will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within ten business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications which do not resolve all deficiencies ten business days will be retained in Phase One until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

(B) Phase Two will include a review of all application requirements. The Department will ensure review of all application materials required under the NOFA and issue notice of any deficiencies on the application's satisfaction of threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within ten business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications which do not resolve all deficiencies within ten business days, will be retained in Phase Two until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to Phase Three. Applications that have not left Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds.

(C) Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Department's Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will draft an underwriting report that will identify staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within ten business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within ten business days, will be retained in Phase Three until Applicant resolves all deficiencies to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to the Department's Executive Award Review and Advisory Committee for final approval before recommendation to the Board. Any application that has not left Phase Three after 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

(D) Upon completion of Phase Three, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as funds are still available for this activity under the applicable NOFA. If Phase Three is completed at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If Phase Three is completed with less than 14 days before the next Board meeting, the recommendation will be placed on the following month's Board meeting agenda.

(E) Because applications are prioritized by "received date," it is possible that the Department will expend all available funds before an application has been completely reviewed. If all funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new funds become available applications already under review will continue with their review without losing their received date status. If new funds do not become available within 90 days of the notification, the applicant will be notified that their application is no longer under consideration and in the event of future funding, they would be required to reapply. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds remain under the NOFA and that the application will not be processed.

(F) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. Beyond the use of the "received date", staff will make selections based upon the need for housing in the community where the development is located, the effectiveness with which the proposed use of funds would aid in continuing to provide affordable housing, the general feasibility of the proposed transaction, and the credibility of the applicant. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from funding any application. The Department strives, through its terms, to maximize the return on its funds while ensuring the financial feasibility of a development. The Department reserves the right to negotiate individual elements of any application.

[(c) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within eight

business days of the deficiency notice date, then five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within ten business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period.]

(d) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Administrative Deficiencies given to Applications submitted under an Open Application Cycle NOFA will be handled in the manner described under Part B of this Section. Applications submitted under a Competitive Application Cycle NOFA will be treated in the following manner. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an application in any manner after the filing deadline, except in response to a direct request from the Department.

(e) [(d)]Applications received by the Department in response to a Competitive Application Cycle NOFA for housing development activities will be handled in the following manner. [Rental Housing Developments will undergo a review as follows:]

(1) Threshold Evaluation. Applications submitted for Rental Housing Developments will be required to meet [comply with] the threshold criteria defined by the NOFA and any Threshold Criteria that may be applicable to the Housing Trust Fund as defined by Chapter 2306 of the Texas Government Code. [required under Section 50.9(f) of this title, which are those required for the Housing Tax Credit Program.]

(2) Scoring Evaluation. For an Application to be scored, the Application must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the scoring criteria identified in the NOFA.

(3) Financial Feasibility Evaluation. After the Application is scored, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate funding amount and terms. In making this determination, the Department will use the Underwriting Rules and Guidelines, §[Section] 1.32 of this title.

(f) All applications for housing development activities will be reviewed in the following manner;

(1) [(4)]A site visit will be conducted. Applicants must receive recommendation for approval from the Department to be considered for funding by the Board.

[(5) Each Rental Housing Development Application will be notified of their score in writing no later than seven days after all applications received have been scored. Subsequently, the recommendation regarding their Application will be made on the Department's web site at least 7 days prior to the Board meeting where the awards will be approved.]

(2) [(6)]After, Board approval for the award of Development activity funds is conditional upon a completed loan closing and any other conditions deemed necessary by the Department.

(g) [(e)]Applications other than [that] Rental Housing Developments will be reviewed and evaluated in accordance with the NOFA for that activity.

(h) [(f)]Applicants may appeal staff's decisions regarding their applications consistent with §[Section] 1.7 of this title.

(i) [(g)]Alternative Dispute Resolution Policy. Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator (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. [In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation and nonbinding arbitration. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's General Counsel and Dispute Resolution Coordinator. The proposal should describe the dispute and the details of the process proposed (including proposed participants, third party, when, where, procedure, and cost). The Department will evaluate whether the proposed process would fairly, expeditiously, and efficiently assist in resolving the dispute and promptly respond to the proposal.]

§51.8. Criteria for Funding.

(a) In considering applications for funding, the Department considers the following requirements under §[Section] 2306.203[(c)], Texas Government Code, and such others as may be enumerated during the funding cycle:

(1) Minimum Eligibility Criteria. To be considered for funding, an Applicant must first demonstrate that it meets each of the following threshold criteria:

(A) The application is consistent with the requirements established in this rule and the NOFA.

(B) The applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development.

(C) The proposal addresses and identifies a housing need. This assessment will be based on statistical data, surveys and other indicators of need as appropriate.

(2) Evaluation Factors. The criteria used to evaluate [rank] applications, as more fully reflected in the NOFA, will include at a minimum the:

(A) leveraging of federal funds including the extent to which the project will leverage State funds with other resources, including federal resources, and private sector funds;

(B) cost-effectiveness of a proposed development; and

(C) extent to which individuals and families of very low income and extremely low income are served by the development.

(b) The Board has final approval on all recommendations for funding.

(c) Eligible Applicants that have been approved for funding and that require a material change in the project description must provide a written request for the material change to the Department prior to implementing the change.

(1) A material change may include, but is not limited to, the following:

(A) Change in project site;

(B) Change in the number of units or set asides; and

(C) Increase in funding.

(2) Failure to comply with this subsection may result in the termination of funding to the applicant.

(d) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any Housing Trust Fund development proposal or written agreement provided that:

(1) in the case of a modification or amendment to the dollar amount of the request or award, such modification or amendment does not increase the dollar amount by more than 25% of the original request or award, or $50,000, whichever is greater; and

(2) in the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department as a result of the award.

(3) Modifications and/or amendments that increase the dollar amount by more than 25% of the original award or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

[(d) The Executive Director of the Department may approve nonmaterial changes in the project description and in the scope of work to be performed for clarification and necessary administrative adjustments, provided that any such change does not increase the dollar amount of the original award of funds.]

§51.9. Other Program Requirements.

(a) Employment opportunities. In connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, opportunities for training and employment shall be given to low, very low, and extremely low income persons residing within the area in which the project is located.

(b) Conflict of Interest.

(1) Conflict Prohibited. No person described in paragraph (2) of this subsection who exercises or has exercised any functions or responsibilities with respect to Housing Trust Fund activities under the Statute or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a Housing Trust Fund assisted activity, or have an interest in any Housing Trust Fund contract, subcontract or agreement or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(2) Persons Covered. The conflict of interest provisions of paragraph (1) of this subsection apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the Recipient.

(c) Right to Inspect and Monitor.

(1) The Department may, at any time, inspect and monitor the records and the work of the project so as to ascertain the level of project completion, quality of work performed, inventory levels of stored material, compliance with the approval plans and specifications, property standards, and program rules and requirements.

(2) Any unsatisfactory findings in the inspection may result in a reduction in the amount of funds requested or termination of funding.

(3) Within 45 days of completion of any construction, and before the release of any retainage funds, Recipients are required to notify the Department of the completion by submitting a certificate of completion and any other documents required by program guidelines, including, but not limited to, the following:

(A) Architect's Certification of Substantial Compliance;

(B) Recipient's Certificate of Substantial Completion; and

(C) Recipient's and supplier's Release of Lien and warrantee.

(4) The Department performs a final close-out visit and assists owners in preparing for long-term compliance requirements upon completion of project development.

(d) Compliance.

(1) Recipient must maintain compliance with each of its written agreements with the Department.

(2) Restrictions are stated and enforced through a regulatory agreement.

(3) These restrictions include, but are not limited to the following:

(A) Rent restrictions;

(B) Record keeping and reporting; and

(C) Income targeting of tenants.

(4) The Department monitors compliance with project restrictions and any other covenants by Recipient in any Housing Trust

Fund agreement. An annual per unit compliance fee of $25.00 may be charged for this review [is charge for this review].

(5) Prior to the leasing of any units, project owners are provided guidance and training by the Department to assist project owners in adhering to restriction and reporting requirements.

(e) For funds being used for multifamily rental properties, the recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in §1.37 [Chapter 60] of this title.

(f) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

§51.10. Citizen Participation.

(a) The Department holds at least one public hearing annually, and additional public hearings prior to consideration of any proposed significant changes to these rules, to solicit comments from the public, eligible applicants, and Recipients on the Department's rules [rule], guidelines, and procedures for the Housing Trust Fund.

(b) The Department considers the comments it receives at public hearings. The Board annually reviews the performance, administration, and implementation of the Housing Trust Fund in light of the comments it receives. The Board also reviews funding goals and set-asides relating to Allocation of Housing Trust Funds.

(c) Applications for Housing Trust Funds are public information and the Department shall afford the public an opportunity to comment on proposed housing applications prior to making awards.

(d) Complaints will be handled in accordance with the Department's complaint procedures of §[Section] 1.2 of this title.

§51.11. Records to be Maintained.

(a) Recipients are required, at least on an annual basis, to submit to the Department information required under Chapter 1 of this title, which may include, [including,] but is not limited to:

(1) such information as may be necessary to determine whether a project is benefiting low, very low, and extremely low income persons and families;

(2) the monthly rent or mortgage payment for each dwelling unit in each structure assisted;

(3) such information as may be necessary to determine whether Recipients have carried out their housing activities in accordance with the requirements and primary objectives of the Housing Trust Fund and implementing regulations;

(4) The size and income of the household for each unit occupied by a low, very low, or extremely low income person or family;

(5) Data on the extent to which each racial and ethnic group and households have applied for and benefited from any project or activity funded in whole or in part with funds made available under the Statute. This data shall be updated annually; and

(6) A final statement of accounting upon completion of the project.

(b) Recipients shall maintain records pertinent to the tenant's files for a period of at least three years.

(c) Recipients shall maintain records pertinent to funding awards including but not limited to project costs and certification work papers for a period of at least five years.

(d) Recipient shall maintain records in an accessible location.

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 September 13, 2004.

TRD-200405640
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-3726

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CHAPTER 53. HOME INVESTMENT PARTNERSHIPS PROGRAM

10 TAC §§53.51 - 53.58, 53.60 - 53.63

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §§53.51 through 53.58, and 53.60 through 53.63, the rules that govern the HOME Investment Partnership Program (HOME). The amendments to this chapter are proposed to improve the operation of the program and improve consistency with other Department rules.

Ms. Edwina P. Carrington, Executive Director, has determined that for the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Carrington has also determined that there will be no fiscal implications for state or local government and that for the first five-year period the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow for more meaningful public input to the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Public hearings will be held across the state between September 27 and October 8, 2004 to receive input on this proposed rule amendment. More information on the hearings can be found at http://www.tdhca.state.tx.us/hearings.htm. Comments on the proposal may be submitted to Mr. David Danenfelzer, Program Administrator, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, david.danenfelzer@tdhca.state.tx.us, or by fax (512) 475-0764 within thirty days of this notice.

These amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

§53.51. Definitions.

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

(1) Activity--A form of assistance by which HOME funds are used to provide incentives to develop and support affordable housing and homeownership through acquisition, new construction, reconstruction, and rehabilitation of housing.

(2) Administrative Deficiencies--The absence of information or a document from the application which is important to a review and scoring of the application as required in this rule.

(3) Applicant--An eligible entity which is preparing to submit or has submitted an application for HOME funds and is designated in the application to assume contractual liability and legal responsibility as the Recipient executing the written agreement with the Department.

(4) Board--The governing board of the Texas Department of Housing and Community Affairs.

(5) CFR--Code of Federal Regulations.

(6) Colonia--A geographic area located in a county some part of which is within 150 miles of the international border of this state that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Water Code; or

(B) has the physical and economic characteristics of a Colonia, as determined by the Texas Water Development Board.

(7) Community Housing Development Organization (CHDO)--A private nonprofit organization that satisfies the requirements of 24 CFR 92.2 and is certified as such by the Department.

(8) Community Housing Development Organization Pre-Development Loan--A form of assistance in which funds are made available as loans to cover those costs outlined in 24 CFR 92.301.

(9) Competitive Application Cycle--A Notice of Funding Availability that has a fixed deadline by which applications must be submitted. Applications will be reviewed for threshold and scoring criteria in accordance with the rules for application review published in the NOFA.

(10) [~~(9)~~]Consolidated Plan--The State Consolidated Plan prepared in accordance with 24 CFR Part 91, which describes the needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs and is subject to approval annually by HUD.

(11) [~~(10)~~]Demonstration Fund--A reserve fund for use alone or in combination and coordination with other programs administered by the Department. This Fund will be available for out of cycle applications, innovative programs brought to the Department for consideration and emergency programs. Additionally, this fund may be used with other programs administered by the Department as outlined in the Consolidated Plan, as approved by the Board.

(12) [~~(11)~~]Department--The Texas Department of Housing and Community Affairs.

(13) [~~(12)~~]Development--Projects that have a construction component, either in the form of new construction or the rehabilitation of multi-unit or single family residential housing that meet the affordability requirements.

(14) [~~(13)~~]Expenditure--Approved expense evidenced by documentation submitted by the Recipient to the Department for purposes of drawing funds from HUD's Integrated Disbursement and Information System (IDIS) [~~IDIS~~] for work completed, inspected and certified as complete, and as otherwise required by the Department.

(15) [~~(14)~~]Family--Includes but is not limited to the following types of families as defined in 24 CFR 5.403:

(A) A family with or without children;

(B) An elderly family;

(C) A near elderly family;

(D) A disabled family;

(E) A displaced family;

(F) The remaining member of a tenant family; and

(G) A single person who is not an elderly or displaced person or a person with disabilities or the remaining member of a tenant family.

(16) [~~(15)~~]Homebuyer Assistance--Down payment, closing costs, and gap financing assistance provided to eligible homebuyers. Minor rehabilitation may be combined with Homebuyer Assistance.[~~Down payment and closing costs assistance provided to eligible homebuyers.~~]

(17) [~~(16)~~]HOME--The HOME Investment Partnerships Program at 42 United States Code §§12701-12839 and the regulations promulgated thereafter at 24 CFR Part 92.

(18) [~~(17)~~]Household--One or more persons occupying a housing unit.

(19) [~~(18)~~]HUD--The United States Department of Housing and Urban Development, or its successor.

(20) [~~(19)~~]IDIS--Integrated Disbursement and Information System established by HUD.

(21) [~~(20)~~]Income Eligible Families:

(A) Low-Income Families--Families whose annual incomes do not exceed 80% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(B) Very Low-Income Families--Families whose annual incomes do not exceed 50% of the median family income for the area, as determined by HUD and published by the Department, with adjustments for family size.

(C) Extremely Low Income Families--Families whose annual incomes do not exceed 30% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size.

(22) [~~(21)~~]Match--Eligible forms of non-federal contributions to a program or project in the forms specified in 24 CFR 92.220.

(23) [~~(22)~~]NOFA--Notice of Funding Availability, published in the *Texas Register*.

(24) [~~(23)~~]Nonprofit organization--A public or private organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate

from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and[has a tax exemption ruling form the Internal Revenue Service under the Internal Revenue Code of 1986, §501 (c), as amended.]

(D) A private nonprofit organization's pending application for 501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement.

(25) Open Application Cycle-A Notice of Funding Availability that does not have a fixed deadline by which applications must be submitted. Applications will be reviewed in accordance with the rules for application review published in the NOFA.

(26) [(24)]Owner-Occupied Housing Assistance--A form of assistance for the purpose of rehabilitating or reconstructing existing owner-occupied housing.

(27) [(25)]Participating Jurisdiction (PJ)--Any state or unit of general local government, including consortia as specified in 24 CFR 92.101, designated by HUD in accordance with 24 CFR 92.105.

(28) [(26)]Program--Funds provided in the form of a contract to an eligible Applicant for the purpose of administering more than one Project or assisting more than one household.

(29) [(27)]Program Income--Gross income received by the Department or program administrators directly generated from the use of HOME funds or matching contributions as further described in 24 CFR 92.2.

(30) [(28)]Project--A site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under 24 CFR 92.2.

(31) [(29)]Recipient--A successful applicant that has been awarded funds by the Department to administer a HOME program, including a State Recipient, Subrecipient, for-profit entity, nonprofit entity, or CHDO.

(32) [(30)]Rental Housing Development--A project for the acquisition, new construction, reconstruction or rehabilitation of multifamily or single family rental housing, or conversion of commercial property to rental housing.

(33) [(31)]Rural Area--A project located within an area which:

(A) is situated outside the boundaries of a primary metropolitan statistical area (PMSA) or a metropolitan statistical area (MSA);

(B) within the boundaries of a primary metropolitan statistical area (PMSA) or a metropolitan statistical area (MSA), if the statistical area has a population of 20,000 or less and does not share a boundary with an urban area; or

(C) in an area that is eligible for funding by the Texas-United States Department of Agriculture-Rural Housing Service (TX-USDA-RHS).

(34) [(32)]Single Family Housing Development--A form of assistance to make funds available to HOME eligible Applicants including non-profit organizations, CHDOs, units of general local government, for-profit housing organizations, sole proprietors and public housing agencies for the purpose of constructing single family affordable housing units for homeownership.

(35) [(33)]Special Needs--Those individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 USC §12701 et seq. and as provided in the Consolidated Plan.

(36) [(34)]State Recipient--A unit of general local government designated by the Department to receive HOME funds.

(37) [(35)]Subrecipient--A public agency or nonprofit organization selected by the Department to administer all or a portion of the Department's HOME program. A public agency or nonprofit that receives HOME funds solely as a developer or owner of housing is not a Subrecipient. The Department's selection of a Subrecipient is not subject to the procurement procedures and requirements.

(38) [(36)]Tenant-Based Rental Assistance (TBRA)--A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance also includes security deposits and utility deposits [and allowances] for rental of dwelling units.

(39) [(37)]Unit of General Local Government--A city, town, county, or other general purpose political subdivision of the State; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR 92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. An urban county is considered a unit of general local government under the HOME Program.

§53.52. Applicant Requirements.

(a) Eligible Applicants. The following organizations or entities are eligible to apply for HOME eligible activities:

(1) nonprofit organizations;

(2) CHDOs;

(3) units of general local government;

(4) for-profit entities and sole proprietors; and

(5) public housing agencies.

(b) Ineligible Applicants: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

(1) Previously funded Recipient(s) whose HOME funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;

(2) Applicants who have not satisfied all eligibility requirements described in subsection (f) of this section[title] and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved (relating to Applicant Requirements);

(3) Applicants that have failed to make payment on any loans or fee commitments made with the Department;[Applicants who have submitted incomplete applications;]

(4) Applicants that have been otherwise barred by HUD and/or the Department;

(5) Applicant or developer, or their staff, that violate the state revolving door policy; and[.]

(6) Applicants that may be ineligible in accordance with those requirements at §49.5 of this title.

(c) Restrictions on Communication.

(1) The Applicant or other person that is active in the ownership or control of the proposed Activity, or individual employed as a lobbyist or in another capacity on behalf of the application, may not communicate with any Board member with respect to the application during the period of time starting with the time an application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

(2) Applicants are restricted from communication with Department staff as described in this subsection. The Applicant or a Related Party, the Development Owner, or the General Contractor, or any Affiliate of the General Contractor, that is active in the ownership or control of the application, or individual employed as a lobbyist or in another capacity on behalf of the application, may communicate with an employee of the Department with respect to the application so long as that communication satisfies the conditions established under subparagraphs (A) through (E) of this paragraph. Communication with Department employees is unrestricted during any board meeting or public hearing held with respect to that application.

(A) The communication must be restricted to technical or administrative matters directly affecting the application;

(B) The communication must occur or be received on the premises of the Department during established business hours;

(C) Communication with the Executive Director, the Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Single Family Finance Production, the Director of Portfolio Management and Compliance, and the Director of Real Estate Analysis of the Department must only be in written form which includes electronic communication through the Internet; and

(D) Communication with other Department staff may be oral or in written form which includes electronic communication through the Internet; and

(E) A record of the communication must be maintained by the Department and included with the application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication.

(d) Noncompliance. Each application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applications found to be in Material Noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(e) Rental Housing Development Site and Development Restrictions. Restrictions include all those items referred to in §49.6 of this title, 24 CFR Part 92 of the HUD HOME program rules, and any additional items included in the NOFA for rental housing developments.

[(1) Floodplain. Any Development proposing new construction located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No Developments proposing rehabilitation will be permitted in the 100 year floodplain unless they already are constructed in accordance with the policy stated in this paragraph for new construction or are able to provide evidence of flood insurance on the buildings and the contents of the units.]

[(2) Ineligible Building Types. Applications involving Ineligible Building Types will not be eligible for an award. Those buildings or facilities which are ineligible are as follows:]

[(A) Hospitals, nursing homes, trailer parks and dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units) are ineligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible if the Development involves the conversion of the building to a non-transient multifamily residential development.]

[(B) Any elderly development of two stories or more that does not include elevator service for any Units or living space above the first floor.]

[(C) Any elderly development with any units having more than two bedrooms.]

[(D) Any Development with building(s) with four or more stories that does not include an elevator.]

[(E) Any Development proposing new construction, other than a Development (new construction or rehabilitation) composed entirely of single-family dwellings, having any Units with four or more bedrooms.]

(f) [(3)]Limitations on the Size of Developments. Developments involving new construction will be limited to 252[250] Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units under all Development programs.

[(4) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.]

(g) [(f)]Eligibility requirements. An Applicant must satisfy each of the following requirements in order to be eligible to apply for HOME funding and as more fully described in the NOFA, when applicable:

(1) provide evidence of its ability to carry out the Program in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing developments;

(2) demonstrate fiscal, programmatic, and contractual compliance on previously awarded Department contracts or loan agreements;

(3) resolve any previous audit findings, unless deemed irresolvable by the Department, and/or outstanding monetary obligations with the Department;

(4) demonstrate reasonable HOME Program expenditure and project performance on [open] contract(s), as determined through program monitoring[. Evidence of expenditure and project identification is submitted with the application, and is reconciled with the Department's IDIS reports during the application review process]; and

(5) demonstrate satisfactory performance otherwise required by the Department and set out in the application guidelines.

(h) [(g)]If indicated by the Department, Recipients must comply with all requirements to utilize the Department's website to provide necessary data to the Department.

(i) [(h)]For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in Section 1.37[Chapter 60] of this title.

§53.53. Application Limitations.

An eligible Applicant may apply for several eligible activities provided that the total amount requested does not exceed the funding limits established in this section. The Department reserves the right to reduce the amount requested in an application based on program or project feasibility, underwriting analysis, or availability of funds:

(1) Award amount for Owner-Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance shall not exceed $500,000 per Activity, per NOFA, except as may be otherwise allowed by the Board.

(2) Award amount for Development activities shall not exceed $1.5 million, except as may be recommended by staff and otherwise approved[allowed] by the Board.

(3) Award amount for CHDO Operating Expenses shall not exceed in any fiscal year 50% of the CHDO's total annual operating expenses in that fiscal year, or $50,000, whichever is greater.[operating expenses in each fiscal year up to $50,000 or 50% of the CHDO's total annual operating expenses for that year, whichever is greater.]

(4) Per unit subsidy for all HOME-assisted housing may not exceed the per-unit dollar limits established by HUD under §221(d)(3) of the National Housing Act which are applicable to the area in which the housing is located, and published by the Department.

(5) Award amount for Disaster Relief shall not exceed $500,000.00 per State declared disaster, or as may be otherwise allowed by the Board. Only one application per affected unit of general local government may be submitted for each designated disaster. Public housing authorities (PHAs) and Nonprofit organizations may only act as an Applicant, in lieu of the unit of local government, if they are so designated by the affected unit of general local government. Award amount for designated Applicants may not exceed $500,000 per State declared disaster, or as may be otherwise allowed by the Board.

(6) Award amount for CHDO Predevelopment Loans may not exceed $50,000 per application. Applicants may submit only one application per NOFA to cover eligible costs, as defined under §53.54(f) of this title.

§53.54. Program Activities.

(a) Owner-Occupied Housing Assistance: Assisted homeowners must be income eligible and must occupy the property as their principal residence. Housing assisted with HOME funds must meet all applicable codes and standards, as specified in the application guide. In addition, housing that is reconstructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a).

(b) Homebuyer Assistance: HOME funds utilized for Homebuyer Assistance are subject to the Department's recapture provisions [restrictions] as approved by HUD in the Consolidated Plan and as outlined in the application guidelines. The eligible uses for Homebuyer Assistance are down-payment assistance, closing cost assistance, and gap financing [and homebuyer counseling]. The total assistance provided per eligible homebuyer may not exceed the limits as determined or allowed by the Board.

(c) Rental Housing Development: All eligible applicants that satisfy the requirements of §53.52 of this title may develop affordable rental housing. Eligible Activities include acquisition, new construction, and rehabilitation. Owners of rental units assisted with HOME funds must comply with income and rent restrictions pursuant to 24 CFR 92.252 and keep the units affordable for a period of time, depending upon the amount of HOME assistance provided. Housing assisted with HOME funds must meet all applicable codes and standards, as specified in the application guide. In addition, housing that is newly constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a).

(d) Tenant-Based Rental Assistance: Provides rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant Based Rental Assistance also includes security and utility deposits for rental of dwelling units. Recipients must comply with 24 CFR 92.209 and 92.216.

(e) Single Family Housing Development: Newly constructed housing must meet all applicable codes and standards, as specified in the application guide. In addition, housing that is newly constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR 92.251(a). If[An]eligible, an Applicant that applies for Single Family Housing Development may also apply for Homebuyer Assistance.

(f) CHDO Pre-Development Loans: The Department may set-aside up to 10% of the annual CHDO 15% Set-Aside for pre-development loans in accordance with 24 CFR 92.300(c). Applicants for pre-development loans will be required to have a summary description of a proposed Development and be able to show the necessary development experience to apply, as outlined in the NOFA or application materials. Predevelopment loan funds may only be used for activities such as project-specific technical assistance, site control loans, and project-specific seed money.[Funds for pre-development loans are available only when provided in conjunction with a Development application and may only be used for activities such as project-specific technical assistance, site control loans, and project-specific seed money.] Pre-development loans must be repaid from construction loan proceeds or other project income. In accordance with 24 CFR 92.301, the Board[Department] may elect to waive pre-development loan repayment, in whole or in part, if there are impediments to project development that the Department determines are reasonably beyond the control of the CHDO.

(g) Set-Asides: other activities deemed eligible under set-asides defined by the Department and outlined in the Consolidated Plan.

§53.55. Prohibited Activities.

In accordance with 24 CFR 92.214, HOME funds may not be used to:

(1) provide a project reserve account for replacements or increases in operating costs, or operating subsidies;

(2) provide TBRA for existing Section 8 Programs;

(3) provide non-federal matching contributions for other programs;

(4) provide assistance to Public Housing Agency owned or leased projects;

(5) carry out Public Housing Modernization;

(6) provide pre-payment of low-income housing mortgages under 24 CFR Part 248;

(7) provide assistance to a project previously assisted with HOME funds during the period of affordability;

(8) provide funds to reimburse an Applicant for acquisition costs for a property already owned by the Applicant, and

(9) pay for any cost that is not eligible under 24 CFR 92.206-92.209.

(10) pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.

§53.56. Distribution of Funds.

In accordance with 24 CFR 92.201(b)(1), the Department makes every effort to distribute HOME funds throughout the state according to the Department's assessment of the geographic distribution of housing needs, as identified in the Consolidated Plan. Funds shall also be allocated in accordance with §2306.111(d) and (g), Texas Government Code. The Department receives HOME funds for areas of the state which have not received Participating Jurisdiction (PJ) status from HUD. §2306.111(c) of the Texas Government Code requires the Department to award at least 95% of HOME Program funds to entities in nonparticipating jurisdictions. All funds not set aside under this section shall be used for the benefit of persons with disabilities who live in areas other than nonparticipating areas.

(1) CHDO Set-Aside. In accordance with 24 CFR 92.300, not less than 15% of the HOME allocation will be set aside by the Department for CHDO eligible activities. CHDO set-aside projects are owned, developed, or sponsored by the CHDO, and result in the development of rental units or homeownership. Development includes projects that have a construction component, either in the form of new construction or the rehabilitation of existing units. If an insufficient number of qualified applications are received by the deadline, the Department reserves the right to hold additional competitions in order to meet federal set-aside requirements.

(2) Special Needs [~~Set-Aside~~]. In accordance with the Consolidated Plan, funds will be available to eligible Applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements), with a documented history of working with special needs populations and with relevant housing related experience. Applicants may submit applications for: Owner-Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance. If an insufficient number of qualified applications are received, the Department reserves the right to transfer funds remaining in accordance with paragraph (6) of this subsection regarding Redistribution.

(3) Other Set-Asides. In accordance with the Consolidated Plan, funds will be available to eligible Applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements), for those eligible activities outlined under Set-Asides.

(4) Administrative Funds. In accordance with 24 CFR 92.207 up to 10% of the Department's HOME[~~a PJ's HOME~~] allocation plus 10% of any program income received may be used for eligible and reasonable planning and administrative costs. Administrative and planning costs may be incurred by the Department[~~PJ~~], State Recipient, Subrecipient, nonprofit entity, or CHDO.

(5) CHDO Operating Expenses. In accordance with 24 CFR 92.208 up to 5% of the Department's[~~a PJ's~~] HOME allocation may be used for the operating expenses of CHDOs. [~~CHDO Applicants awarded funds for set aside activities may be eligible for operating expenses.~~] The Department may award CHDO Operating Expenses in conjunction with the award of CHDO Funds, or through a separate application cycle not tied to a specific Activity.

(6) Redistribution. In an effort to commit HOME funds in a timely manner, the Department may reallocate funds set-aside in accordance with the Consolidated Plan, at its own discretion, to other regions or activities if:

(A) the Department fails to receive a sufficient number of applications from a particular region or Activity;

(B) no applications are submitted for a region; or

(C) applications for a region or Activity do not meet eligibility requirements or minimum threshold scores (when applicable), or are financially infeasible as applicable.

(7) Marginal Applications. When the remainder of the allocation within a region is insufficient to completely fund the next ranked application in the region or Activity, it is within the discretion of the Department to:

(A) fund the next ranked application for the partial amount, reducing the scope of the application proportionally;

(B) make necessary adjustments to fully fund the application; or

(C) transfer the remaining funds to other regions or activities.

(8) HOME Demonstration Fund. The Department, with Board approval, may reserve HOME funds to combine and coordinate with other programs administered by the Department as outlined in the Consolidated Plan, or for housing activities the Department is permitted to fund under applicable law.

§53.57. Allocation Plan.

The allocation plan created by the Department will be based on the funding allocation outlined in the Department's Consolidated Plan, after a full accounting of available funds has been determined.[~~will be based on the funding recommendations in the Consolidated Plan.~~]

§53.58. Application Process.

(a) An Applicant must submit a completed application to be considered for funding, along with an application fee determined by the Department and outlined in the NOFA. Applications containing false information and applications not received by the deadline will be disqualified. Disqualified Applicants are notified in writing. All applications must be received by the Department by 5:00 p.m. on the date identified in the NOFA, regardless of method of delivery.

(b) Applications received by the Department in response to an Open Application Cycle NOFA will be handled in the following manner.

(1) The Department will accept applications on an ongoing basis, until such date when the Department makes notice to the public that the Open Application Cycle has been closed. All applications must be received during business hours (8:00 a.m. to 5:00 p.m.) on any business day. The Department may limit the eligibility of applications in the NOFA.

(2) Each application will be handled on a first-come, first-served basis as further described in this section. Each application will

be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review.

(A) Phase One will begin as of the received date. Applications not being considered under the CHDO Set-Aside will be passed through to Phase Two upon receipt. Phase One will only entail the review of the CHDO Certification package. The Department will ensure review of these materials and issue notice of any deficiencies on the CHDO Certification package within 30 days of the received date. Applicants who are able to resolve their deficiencies within ten business days will be forwarded into Phase Two and will continue to be prioritized by their received date. Applications with deficiencies not cured within ten business days, will be retained in Phase One until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies will the Application be forwarded to Phase Two. Applications that have not proceeded out of Phase One within 50 days of the received date will be terminated and must reapply for consideration of funds.

(B) Phase Two will include a review of all application requirements. The Department will ensure review of materials required under the NOFA and will issue notice of any deficiencies as to threshold and eligibility within 45 days of the date it enters Phase Two. Applicants who are able to resolve their deficiencies within ten business days will be forwarded into Phase Three and will continue to be prioritized by their received date. Applications with deficiencies not cured within ten business days, will be retained in Phase Two until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon satisfaction of all deficiencies, and of threshold and eligibility requirements will the Application be forwarded to Phase Three. An Application that has not proceeded out of Phase Two within 65 days of the date it entered Phase Two will be terminated and must reapply for consideration of funds. Application submitted for non-development Activities will not go through a Phase Three evaluation.

(C) Phase Three will include a comprehensive review for material noncompliance and financial feasibility by the Department. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended loan terms, the loan or grant amount and any conditions to be placed on the development. The Department will ensure financial feasibility review and issue notice of any required deficiencies for that feasibility review within 45 days of the date it enters Phase Three. Applicants who are able to resolve their deficiencies within ten business days will be forwarded into "Recommended Status" and will continue to be prioritized by their received date. Applications with deficiencies not satisfied within ten business days, will be retained in Phase Three until all deficiencies have been addressed/resolved by the Applicant to the Department's satisfaction. Only upon resolution of all deficiencies will the Application be forwarded to the Department's Executive Awards Review and Advisory Committee for final approval before recommendation to the Board. Any application that has not finished Phase Three within 65 days of the date it entered Phase Three will be terminated and must reapply for consideration of funds.

(D) Upon completion of the applicable final review Phase, applications will be presented to the Executive Awards Review and Advisory Committee (the Committee). If satisfactory, the Committee will then recommend the award of funds to the Board, as long as HOME funds are still available for this Activity under the applicable NOFA. If the Application is recommended at least 14 days prior to the next Board meeting, it will be placed on the next Board meeting's agenda. If the Application is recommended with less than 14 days before the next Board meeting, the recommendation will be placed on the subsequent month's Board meeting agenda. Applications which are not recommended by the committee will be either returned to Department Staff or terminated.

(E) Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an application has completed all phases of its review. In the case that all HOME funds are committed before an application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for 90 days in its current phase. If new HOME funds become available, applications will continue onward with their review without losing their received date priority. If HOME funds do not become available within 90 days of the notification, the Applicant will be notified that their application is no longer under consideration. The applicant must reapply to be considered for future funding. If on the date an application is received by the Department, no funds are available under this NOFA, the applicant will be notified that no funds exist under the NOFA and the application will not be processed.

(F) The Department may decline to fund any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any application.

[(b) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within eight business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within ten business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an application in any manner after the filing deadline, except in response to a direct request from the Department.]

(c) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the application, the Department staff may request clarification or correction of such Administrative Deficiencies including both threshold and/or scoring documentation. The Department staff may request

clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. Administrative Deficiencies given to Applications submitted under an Open Application Cycle NOFA will be handled in the manner described under Part B of this Section. Applications submitted under a Competitive Application Cycle NOFA will be treated in the following manner. If Administrative Deficiencies are not cured to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an application in any manner after the filing deadline, except in response to a direct request from the Department.

[(c) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation and nonbinding arbitration. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's General Counsel and Dispute Resolution Coordinator. The proposal should describe the dispute and the details of the process proposed (including proposed participants, third party, when, where, procedure, and cost). The Department will evaluate whether the proposed process would fairly, expeditiously, and efficiently assist in resolving the dispute and promptly respond to the proposal.]

(d) Alternative Dispute Resolution Policy. Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, and 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.

§53.60. Process for Awards.

(a) The Department will publish a NOFA in the Texas Register and on the Department's website. The NOFA may be published as either an Open or Competitive Application Cycle. The NOFA will establish and define the terms and conditions for the submission of applications, and may set a deadline for receiving applications under a Competitive Application Cycle. The NOFA will also indicate the approximate amount of available funds. [The Department will publish a NOFA in the Texas Register. The NOFA will establish a deadline for receiving applications and indicate the approximate amount of available funds.]

(b) Selection Procedures for non-development Activities[activities], such as, Owner Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance.

(1) Applications must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92 and in these rules. Applications that do not comply with such requirements are disqualified. Disqualified Applicants are notified in writing.

(2) Applications are ranked from highest scores to lowest in their respective regions or Activity according to HOME Program scores. All funds not subject to the Regional Allocation Formula may be awarded on a first-come, first-serve basis.

(3) Applications must meet or exceed a minimum score determined by Department's staff for[that meet or exceed a minimum score of 60% of the total HOME Program score established for] the respective activities to be[are] considered for funding.

(4) In event of a tie between two or more Applicants, the Department reserves the right to determine which application will receive a recommendation for funding. This decision will be[or if all tied Applicants will receive a partial recommendation for funding,] based on housing need factors and feasibility of the proposed project identified in the application. Tied Applicants may also receive a recommendation for partial funding,

(5) Applicants will be notified of their score in writing no later than seven calendar days after all applications received have been scored. Subsequently, the recommendation regarding their application will be made available on the Department's website at least seven calendar days prior to the Board meeting at which the awards may be approved.

[(5) Applicants will be notified at least 7 calendar days prior to the date of the Board meeting of the status of their application.]

(6) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for each Activity.

(7) Applicants may appeal staff's decision regarding their applications in accordance with §1.7 of this title.

(c) Selection Procedures for Development activities, such as, Single Family Housing Development and Rental Housing Development.

(1) Applications must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92, and in these rules. Applications that do not comply with HOME requirements are disqualified. Disqualified Applicants are notified in writing.

(2) Rental Housing Developments will undergo a review in accordance with the rules set out previously in this section and as prescribed in the NOFA.[as follows:]

[(A) Threshold Evaluation. Applications submitted for Rental Housing Developments will be required to comply with the threshold criteria required under §50.9(f) of this title, which are those required for the Housing Tax Credit Program.]

[(B) Scoring Evaluation. For an application to be scored, the application must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the scoring criteria identified in the NOFA.]

[(C) Financial Feasibility Evaluation. After the application is scored, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division consistent with §53.56 of this title. The Department shall underwrite an application to determine the financial feasibility of the Development and an appropriate funding amount and terms. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title.]

(3) Single Family Housing Developments will undergo a review as follows:

(A) Applicants[For applications] that meet or exceed a minimum score, as determined by Department's staff, of[of 60% of] the total HOME Program scoring points established for each Development Activity to be[are] considered for funding. Applicants not meeting or exceeding the minimum score established in the subparagraph of this paragraph are disqualified and are notified in writing. Development applications are ranked from highest to lowest scores according to HOME Program scores on a statewide basis.

(B) Applications meeting the HOME Program requirements established in subparagraph (A) of this paragraph must receive an underwriting analysis by the Department.

(4) A site visit will be conducted as part of the HOME Program Development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(5) In event of a tie between two or more Applicants, the Department reserves the right to determine which application will receive a recommendation for funding. This decision will be based on housing need factors and feasibility of the proposed project identified in the application. Tied Applicants may also receive a partial recommendation for funding.[In event of a tie between two or more Applicants, the Department reserves the right to determine which application will receive a recommendation for funding, or if all tied Applicants will receive a partial recommendation for funding, based on housing need factors and feasibility of the proposed project identified in the application.]

(6) Each Development application will be notified of its score in writing no later than seven calendar days after all applications received have been scored. Subsequently, the recommendation regarding their application will be made available on the Department's web site at least seven[7] calendar days prior to the Board meeting at which the awards may[will] be approved.

(7) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for such Activity.

(8) Even after Board approval for the award of HOME Development Activity funds may be [is]conditional upon a completed loan closing and any other conditions deemed necessary by the Department.

(9) Applicants may appeal staff's decision regarding their applications in accordance with §1.7 of this title.

§53.61. General Selection Criteria.

At a minimum, the following criteria are utilized in evaluating the applications for HOME funds. The applicable criteria are further delineated in the application guidelines and NOFA, which are part of the application package.

(1) Needs Assessment--Whether the proposed project meets the demographic, economic, and special need characteristics of the population residing in the target area and the need that the HOME program is designed to address, using qualitative and quantitative information, market studies, if appropriate, and other source documentation as delineated in the application guidelines, which are part of the application.

(2) Program Design--Whether the proposed project meets the needs identified in the needs assessment, whether the design is complete [(including timeline for program implementation and service delivery)] and whether the project fits within the community setting. Information required includes, but is not limited to: community involvement; support services and resources; scope of program; income and population targeting; marketing, fair housing and relocation plans, as applicable.

(3) Capability of Applicant--Whether the Applicant has the capacity to administer and manage the proposed program/project, demonstrated through previous experience either by the Applicant, cooperating entity or key staff (including other contracted service providers), in program management, property management, acquisition, rehabilitation, construction, real estate finance counseling and training or other activities relevant to the proposed program, and the extent to which Applicant has the capability to manage financial resources, as evidenced by previous experience, documentation of the Applicant or key staff, and existing financial control procedures.

(4) Financial Feasibility. Applications for funding will be reviewed for financial feasibility based on the Department's underwriting standards for development activities and as outlined in the NOFA or application materials for non-development activities. The review will be based on the supporting financial data provided by Applicants and third party reports submitted with the application.[Financial Design--Whether the proposed program budget includes eligible forms of matching contributions in accordance with 24 CFR 92.220, as may be amended.]

§53.62. Program Administration.

(a) Agreement. Upon approval by the Board, Applicants receiving HOME funds shall enter into, execute, and deliver to the Department all written agreements between the Department and Recipient, including land use restriction agreements and compliance agreements as required by the Department.

(b) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any HOME written agreement provided that:

(1) in the case of a modification or amendment to the dollar amount of the award, such modification or amendment does not increase the dollar amount by more than 25% of the original award or $50,000, whichever is greater; and

(2) in the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department as a result of the award.

(3) Modifications and/or amendments that increase the dollar amount by more than 25% of the original award or $50,000,

whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

(c) Deobligation.

(1) The Department reserves the right to deobligate funds in the following situations:

(A) Recipient has any unresolved compliance issues on existing or prior contracts with the Department.

(B) Recipient fails to set-up programs/projects or expend funds in a timely manner.

(C) Recipient defaults on any agreement by and between Recipient and the Department.

(D) Recipient misrepresents any facts to the Department during the HOME application process, award of contracts, or administration of any HOME contract.

(E) Recipient's inability to provide adequate financial support to administer the HOME contract or withdrawal of significant financial support.

(F) Recipient is not in compliance with 24 CFR Part 92, or these rules.

(G) Recipient declines funds.

(H) Recipient fails to expend all funds awarded.

(2) The Department, with approval of the Board, may elect to reassign funds following the Deobligation Policy, adopted by the Board on January 17, 2002, in the order prioritized as follows:

(A) Successful appeals (as allowable under program rules and regulations), or

(B) Disaster Relief (disaster declarations or documented extenuating circumstances such as imminent threat to health and safety), or

(C) Special Needs, or

(D) Colonias, or

(E) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.

(d) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.[~~Upon determination of good cause, the Department, upon approval of the Board, may waive all or any part of these rules that are within the discretion of the State.~~]

(e) Additional Funds. In the event the Department receives additional funds from HUD, the Department, with Board approval, may elect to distribute funds to other Recipients.

(f) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

§53.63. Community Housing Development Organization (CHDO) Certification.

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

(1) Applicant--A private nonprofit organization that has submitted a request for certification as a Community Housing Development Organization (CHDO) to the Department. An Applicant for the CHDO set aside must be a CHDO certified by the Department or as otherwise certified or designated as described in subsection (d) of this section.

(2) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Secretary of State.

(3) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(4) Community--For urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area, but not the whole state.

(5) Low income--An annual income that does not exceed eighty percent (80%) of the median income for the area, with adjustments for family size, as defined by the U.S. Department of Housing and Urban Development (HUD).

(6) Memorandum of Understanding (MOU)--A written statement detailing the understanding between parties.

(7) Neighborhood--A geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

(8) Nonprofit organization--Any private, nonprofit organization (including a State or locally chartered, nonprofit organization) that:

(A) is organized under State or local laws,

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual,

(C) complies with standards of financial accountability acceptable to the Secretary of the United States Department of Housing and Urban Development, and

(D) has among its purposes significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons.

(9) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

[(b)] Application Procedures for Certification of CHDO. An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO application must be submitted with an application for HOME funding under the CHDO set-aside, and be recertified on an annual basis.[.] The application must include documentation evidencing the requirements of this subsection.

(10) [(1)]Applicant must have the following required legal status at the time of application to apply for certification as a CHDO:

(A) Organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by:

(i) Charter, or

(ii) Articles of Incorporation.

(B) The Applicant must be registered with the Secretary of State to do business in the State of Texas.

(C) No part of the private nonprofit organization's net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

(i) Charter, or

(ii) Articles of Incorporation.

(D) The Applicant must have the following tax status:

(i) A current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a CHDO; or

(ii) Classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(iii) A private nonprofit organization's pending application for 501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's:

(i) Articles of Incorporation,

(ii) Charter,

(iii) Resolutions, or

(iv) Bylaws.

(F) The Applicant must have a clearly defined service area. The Applicant may include as its service area an entire community as defined in subsection (a)(4) of this section, but not the whole state. Private nonprofit organizations serving special populations must also define the geographic boundaries of its service areas. This subparagraph does not require a private nonprofit organization to represent only a single neighborhood.

(11) [(2)]An Applicant must have the following capacity and experience:

(A) Conforms to the financial accountability standards of 24 CFR 84.21, "Standards of Financial Management Systems" as evidenced by:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department,

(ii) certification from a Certified Public Accountant, or

(iii) HUD approved audit summary.

(B) Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

(i) resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds, or

(ii) contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

(C) Has a history of serving the community within which housing to be assisted with HOME funds is to be located as evidenced by:

(i) statement that documents at least one year of experience in serving the community, or

(ii) for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community; and

(iii) The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other official of the organization.

(12) [(3)]An Applicant must have the following organizational structure:

(A) The Applicant must maintain at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations in the Applicant's service area. Low-income neighborhoods are defined as neighborhoods where 51 percent or more of the residents are low-income. Residents of low-income neighborhoods do not have to be low income individuals themselves. If a low-income individual does not live in a low-income neighborhood as herein defined, the low-income individual must certify that he qualifies as a low-income individual. This certification is in addition to the affidavit required in clause (ii) of this subparagraph. For the purpose of this subparagraph, elected representatives of low-income neighborhood organizations include block groups, town watch organizations, civic associations, neighborhood church groups, Neighbor Works organizations and any organization composed primarily of residents of a low-income neighborhood as herein defined whose primary purpose is to serve the interest of the neighborhood residents. Compliance with this subparagraph shall be evidenced by:

(i) written provision or statement in the organizations By-laws, Charter or Articles of Incorporation,

(ii) affidavit in a form prescribed by the Department signed by the organization's Executive Director and notarized, and

(iii) current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such.

(B) The Applicant must provide a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representation on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

(i) organization's By-laws,

(ii) Resolution, or

(iii) written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval.

(C) A local or state government and/or public agency cannot qualify as a CHDO, but may sponsor the creation of a CHDO. A private nonprofit organization may be chartered by a State or local government, but the following restrictions apply:

(i) The state or local government may not appoint more than one-third of the membership of the organization's governing body.

(ii) The board members appointed by the state or local government may not, in turn, appoint the remaining two-thirds of the board members.

(iii) No more than one-third of the governing board members may be public officials. Public officials include elected officials, appointed public officials, employees of the participating jurisdiction, or employees of the sponsoring state or local government, and individuals appointed by a public official. Elected officials include, but are not limited to, state legislators or any other statewide elected officials. Appointed public officials include, but are not limited to, members of any regulatory and/or advisory boards or commissions that are appointed by a State official.[~~No more than one-third of the governing board members may be public officials. Public officials include elected officials, appointed public officials, public employees, and individuals appointed by a public official. Elected officials include, but are not limited to, state legislators or any other statewide elected officials. Appointed public officials include, but are not limited to, members of any regulatory and/or advisory boards or commissions that are appointed by a State official. Public employees include, but are not limited to, employees of State governmental entities or departments of State government.~~]

(iv) Public officials who themselves are low-income residents or representatives do not count toward the one-third minimum requirement of community representatives in subparagraph (A) of this paragraph.

(v) Compliance with clauses (i)-(iv) of this subparagraph shall be evidenced by:

(I) organization's By-laws,

(II) Charter, or

(III) Articles of Incorporation.

(D) If the Applicant is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the Applicant's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the Applicant's:

(i) By-laws,

(ii) Charter, or

(iii) Articles of Incorporation.

(E) An Applicant may be sponsored or created by a for-profit entity provided the for-profit entity's primary purpose does not include the development or management of housing, as evidenced in the for-profit organization's By-laws. If an Applicant is associated or has a relationship with a for-profit entity or entities, the Applicant must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by:

(i) organization's By-laws, or

(ii) Memorandum of Understanding (MOU).

(13) [~~(4)~~]Religious organizations cannot qualify as a CHDO, but may sponsor the creation of wholly secular private nonprofit organizations. If Applicant is sponsored by a religious organization, the following restrictions apply.

(A) The Applicant must prove that it is not controlled by the religious organization.

(B) The developed housing must be used exclusively for secular purposes and the housing owned, developed or sponsored by the Applicant must be made available to all persons regardless of religious affiliations or beliefs.

(C) There are no limits on the proportion of the board that may be appointed by the religious organization.

(D) Compliance with these clauses (i)-(iii) of this subparagraph shall be evidenced by:

(i) organization's By-laws,

(ii) Charter, or

(iii) Articles of Incorporation.

(b) [~~(c)~~]An application for Community Housing Development Organization (CHDO) Certification will only be accepted if submitted with an application to the Department for HOME funds. If all requirements under this section are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new application for CHDO certification must be submitted to the Department with each new application for HOME funds under the CHDO set aside.

(c) [~~(d)~~]If an Applicant submits an application for CHDO certification for a service area that is located in a local Participating Jurisdiction, the Applicant must submit evidence of the local taxing jurisdiction or local Participating Jurisdiction certification or designation of the Applicant as a CHDO.

(d) In the case of an Applicant applying for HOME funds (See 5% Disability requirement at §53.56 of this Title) from the Department to be used in a Participating Jurisdiction, where neither the Participating Jurisdiction nor the local taxing entity certifies CHDOs outside of the local HOME application process, the Certification process described in this section applies.

~~[(e) In the case of an Applicant applying for HOME funds (CHDO set-aside) from the Department to be used in a Participating Jurisdiction, where neither the Participating Jurisdiction nor the local taxing entity certifies CHDOs outside of the local HOME application process, the Certification process described in this section applies.]~~

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 September 13, 2004.

TRD-200405639
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-3726

CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING AND ASSET MANAGEMENT

10 TAC §60.1

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Subchapter A, §60.1, concerning the Compliance Monitoring Policies and Procedures.

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

Ms. Carrington also has determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit adoption of new rules administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, small business or micro-business required to comply with the repeal as proposed. The proposed repeal will not have an impact on any local economy.

Comments may be submitted to Mike Garrett, Portfolio Management and Compliance Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: michael.garrett@tdhca.state.tx.us

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

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

§60.1. Compliance Monitoring Policies and Procedures.

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 September 13, 2004.

TRD-200405657
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-4595

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §60.1

The Texas Department of Housing and Community Affairs (the Department) proposes new Subchapter A, §60.1, concerning the Compliance Monitoring Policies and Procedures. This section is proposed new in order to clarify and simplify wording and to incorporate the changing role of the Portfolio Compliance section. The goal is to have clearer, more understandable rules in place and eliminate any confusion and misinterpretation.

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

Ms. Carrington also has determined that for each year of the first five-years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be to permit the adoption of new rules for Compliance Monitoring Policies and Procedures within the State of Texas, thereby enhancing the State's ability to provide decent, safe and sanitary housing for Texans through the programs administered by the Department. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to any person, small business or micro-business required to comply with the new rule as proposed. The proposed new rule will not have an impact on any local economy.

Comments may be submitted to Mike Garrett, Portfolio Management and Compliance Division, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by email at the following address: michael.garrett@tdhca.state.tx.us

The new rule is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The proposed new rule affects no other code, article or statute.

§60.1. Compliance Monitoring Policies and Procedures.

(a) Purpose. The Department monitors rental developments receiving assistance under the Housing Tax Credit program ("HTC"), the HOME program, the Tax Exempt Bond program, the Housing Trust Fund program, and the Federal Deposit Insurance Corporation's Affordable Housing Program. Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Portfolio Management and Compliance Division (PMC) monitors to ensure owners comply with the program rules and regulations, Chapter 2306 of the Texas Government

Code, the Land Use Restriction Agreement (LURA) requirements and conditions and representations imposed by the application or award of funds by the Department. The Portfolio Management and Compliance Division's processes, eligibility procedures, forms, and additional programmatic details are set out in individual program regulations and in Owner's Compliance Manual(s) prepared by the Portfolio Management and Compliance Division, as amended from time to time. The rules under this section address processes, reports and records that are required to facilitate the Department's monitoring of a Development for compliance with a program's federal and state rules and regulations. These rules do not address forms and other records that may be required of Development Owners by the Internal Revenue Service ("IRS") or other governmental entities more generally, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

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

(1) Affordability Period. The affordability period commences as specified in the LURA, or federal regulation or commences on the first day of the compliance period as defined by §42(i)(1) of the Internal Revenue Code and continues through the appropriate program's affordability requirements or termination of the LURA, which ever is later. The term of the affordability period shall be imposed by LURA or other deed restriction and may be terminated upon foreclosure. During this period the Department shall monitor to ensure compliance with programmatic rules, regulations and application representations.

(2) Board means the governing board of the Texas Department of Housing and Community Affairs.

(3) Department means the Texas Department of Housing and Community Affairs, an official and public agency of the State of Texas pursuant to Chapter 2306 of the Texas Government Code.

(4) Development means a property or work or a project, 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 and that is financed under the provisions of Chapter 2306, Texas Government Code, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low 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, sewers, 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;

(B) single and multifamily dwellings in rural and urban areas.

(C) a proposed qualified low income housing project, as defined by §42(g), Internal Revenue Code of 1986 (26 U.S.C. §42(g)), that consists of one or more buildings containing multiple units, that is financed under a common plan, and that is owned by the same person for federal tax purposes, including a project consisting of multiple buildings that are located on scattered sites and contain only rent-restricted units.

(5) Low Income Unit means a unit that is intended for occupancy by an income eligible household.

(6) Land Use Restriction Agreement (LURA). An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this subchapter; Chapter 2306, Texas Government Code; the Internal Revenue Code, §42; and the requirements of the various programs administered or funded by the Department.

(7) Material Non-Compliance. A Housing Tax Credit development located within the state of Texas will be classified by the Department as being in material non-compliance status if the non-compliance score for such development is equal to or exceeds a threshold of 30 points in accordance with the material non-compliance provisions, methodology, and point system of this title or, if the Housing Tax Credit development is located outside the state of Texas, and non-compliance is reported to the Department that would equal or exceed a non-compliance threshold score of 30 points if measured in accordance with the methodology and point system set forth in this subsection. Non Housing Tax Credit Developments monitored by the Department with 1 to 50 low income units will be classified as being in material noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non Housing Tax Credit Developments monitored by the Department with 51 to 200 low income units will be classified as being in material noncompliance status if the noncompliance score is equal to or exceeds a threshold of 120 points. Non Housing Tax Credit Developments monitored by the Department with 201 or more low income units will be classified as being in material noncompliance status if the noncompliance score is equal to or exceeds a threshold of 150 points. For all programs, a Development will be in material noncompliance if the noncompliance is stated in subsection (r) of this section to be material noncompliance.

(8) Unit. Any residential rental unit in a development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping eating, cooking, and sanitation.

(c) Construction inspections. The Department, through the Portfolio Management and Compliance Division, shall monitor for compliance with all applicable requirements through the entire construction or rehabilitation phase associated with any Development funded or administered by the Department. Construction is monitored to verify inclusion of application representations and Department design requirements.

(1) Construction monitoring procedures for HTC Developments include:

(A) A plan review performed by the Department or by an independent plan review contractor engaged by the Department. The reviewer uses the TDHCA Application Compliance Checklist. The plan approval certificate is required by the Department in order for the issuance of the Acknowledgement Notice at the commencement of substantial construction.

(B) A final inspection performed after completion of construction by inspectors for the owner, lender and/or syndicator using the TDHCA Application Compliance Checklist.

(C) An accessibility clearance performed after completion of construction by an owner-contracted accessibility specialist selected by the Development owner from the Department's list of approved contractors using the TDHCA Accessibility Checklist.

(2) Construction monitoring procedures for non-HTC multifamily Developments include:

(A) A plan review performed by the Department or by an owner-contracted independent plan review contractor selected from the Department's list of approved plan reviewers. The reviewer uses the TDHCA Application Compliance Checklist and issues a Certificate of Compliance once plans are approved. The plan approval certificate is required by the Department in order for the borrower or grantee to obtain a Notice to Proceed with Construction.

(B) Mid-construction progress inspections conducted within ten days prior to draw request submittals to the Department. Mid-construction inspections are performed by independent licensed architects or engineers engaged by the borrower or grantee. Depending on particular risks associated with the Development, the Department may require the borrower or grantee to select a contractor from the Department's list of approved inspectors. With each draw package, the borrower or grantee provides AIA documents (or equivalents) G701 Change Order form for any change in contract scope of work, cost, or time; G702 Application and Certificate for Payments; G703 Continuation Sheet; and G711 Field Report.

(C) A final inspection is performed by the Department or an owner-contracted independent inspection contractor selected from the Department's list of approved final inspectors. The final inspector uses the TDHCA Application Compliance Checklist and issues the Certificate of Compliance once all work is in place and approved. The certificate is required by the Department in order to release retainage.

(3) The Department may require a copy of all reports from all construction inspections performed for the lender and/or syndicator for HTC Developments. The Department may provide those inspectors for the lenders and syndicator with required documentation to be completed that will confirm satisfaction of the requirements of this rule.

(4) Third Party Inspections if necessary, based on the level of risk associated with the Development, the Department may inspect or obtain, at the owner's expense, a Third-Party inspection for purposes of monitoring during the construction phase. The Development owner shall, upon request, provide to the Department, or any Third-Party inspector hired by the Department any construction documents, plans, or specifications for the Development to perform these inspections. The Department uses the Real Estate Analysis division and the Portfolio Management and Compliance division to determine the amount of risk associated with each Development. Owners of high risk HTC Developments may be required to submit copies of all inspection reports made throughout the construction of the Development within fifteen days of the date the inspection occurred as well as the AIA documents required for non-HTC mid-construction inspections described above. Owners of high risk non-HTC Developments may be required to supplement their mid-construction draw request submittals with inspection reports prepared by an inspector selected and engaged by the owner from the Department's list of approved inspector. Risk factors determined by the Real Estate Analysis division involve any change in total construction cost or change in square footage. For non-HTC Developments, such changes are referred to the Department's Real Estate Analysis Division by the Portfolio Management and Compliance Division if the changes are identified during mid-construction. For all multifamily Developments, changes of square footage or changes in the scope of work are referred by the Portfolio, Management and Compliance Division to the Department's Real Estate Analysis Division and to the Department's Multifamily Finance Production Division if identified at plan review or final inspection. The Portfolio Management and Compliance Division determines HTC Developments to be at high risk if the plan reviewer or final inspector evaluates the construction plans and specifications or completed construction work to be low quality as indicated by the reviewer or inspector using the quality evaluation factors in the Application Compliance Checklist. The Portfolio Management and Compliance Division evaluates risk of non-HTC Developments at the time of draw request or retainage release as low risk if none of the following factors apply, or high risk if four of the following factors apply:

(A) The Department is the first lien holder;

(B) The Development is a rehabilitation;

(C) 90% or more of the award is requested at once (predevelopment and/or construction costs);

(D) Retainage release is requested and no inspection was conducted in the past 6 months;

(E) Borrower/grantee has a known history of non-compliance issues:

(F) Borrower/grantee has little or no prior development experience;

(G) The current draw is the first request;

(H) Reimbursement of stored materials is requested;

(I) Building plans are evaluated to be of low quality in the plan review;

(J) There is a possible lack of full cooperation from the Development team or there are other unusual circumstances.

(5) After completion of a Development's construction phase, the Department periodically reviews the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from the United States Department of Agriculture Rural Development (TX-USDA-RHS) will be exempt from these inspections, provided that the Development Owner, upon request, provides to the Department copies of all inspections made by TX-USDA-RHS throughout the construction of the Development within fifteen days of the date the inspection occurred. (§2306.081 of the Texas Government Code).

(d) Monitoring During the Affordability Period. The Department will monitor compliance with representations made by the Development Owner in the Application and in the LURA, whether required by the applicable program rules, regulations, including HOME Final Rule, §42 of the Internal Revenue Code, §142 of the Internal Revenue Code Treasury Regulations or other rulings of the IRS, Community Planning and Development (CPD) Notices and Chapters 51 and 53 of this title.

(e) Compliance history. Prior to Board approval of any development application, the Portfolio Management and Compliance Division shall assess the compliance history of the Applicant and any affiliate of the Applicant with respect to all applicable requirements and any compliance issues associated with the proposed Development, pursuant to §2306.057 of the Texas Government Code. The Portfolio Management and Compliance Division will provide the Board:

(1) the compliance history of the Applicant and any affiliate of the Applicant with respect to all applicable requirements;

(2) the compliance issues associated with the proposed Development; and

(3) a written report regarding the results of the assessments. The Board shall fully document and disclose any instances in which the Board approves a Development application despite

any non-compliance associated with the Development, Applicant, or affiliate.

(f) Section 8 voucher holders. The Department will monitor to ensure development owners comply with §1.14 of this title regarding residents receiving rental assistance under Section 8, United States Housing Act of 1937 (42 U.S. C. §1437F). (§2306.269 and §2306.6728 of the Texas Government Code).

(g) Monitoring of compliance. The Department may contract with an independent third party to monitor a Development during construction or rehabilitation and during operation for compliance with any conditions imposed by the Department in connection with funding or other Department oversight and appropriate state and federal laws, as required by other state law or by the Board. (§2306.6719 of the Texas Government Code).

(h) Recordkeeping. All Development Owners must comply with program recordkeeping requirements. In addition, records including items listed in paragraphs (1) - (12) of this subsection must be kept for each qualified low income rental unit and building in the Development, commencing with lease up activities and continuing on an monthly basis until the end of the affordability period. Records must include:

(1) the total number of residential rental units in the Development, including the number of bedrooms;

(2) the move in and move out date for each residential rental unit in the Development;

(3) which residential rental units are low income units and the income level of the residents broken into 30, 40, 50, 60 or 80 percent of the area median income;

(4) the rent charged for each residential rental unit including, with respect to low income units, documentation to support the utility allowance applicable to such unit and any rental assistance received;

(5) the number of occupants in each low income unit;

(6) the low income rental unit vacancies and information that shows when and to whom all available units were rented;

(7) the annual income certification of each tenant of a low income unit, in the form designated by the Department, as may be modified from time to time;

(8) documentation to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 ("Section 8");

(9) the total number of units, reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(10) the race and ethnicity of the residents of each Development;

(11) the number of units occupied by households receiving government-supported housing assistance and the type of assistance received; and

(12) any additional information as required by the Department.

(i) Reporting. Each Development shall submit reports as required by the Department. Each Development that receives financial assistance or is administered by the Department including The FDIC's Affordable Housing Program shall submit the information required under this subsection which describes the annual Fair Housing Sponsor Report required by §2306.0724 of the Texas Government Code. The Department may require this information to be submitted electronically and in the format prescribed by the Department. Section 1.11 of this title contains procedures regarding filing and penalties for failure to file reports.

(1) Part A, the "Owner's Certification of Program Compliance"; Part B, the "Unit Status Report"; and Part C, "Tenant Services Provided Report" of the Fair Housing Sponsor Report, must be provided to the Department no later than March 1st of each year, reporting data current as of January 1 of each reporting year. Part D, "Owner's Financial Certification", which includes the current audited financial statements, and income and expenses of the Development for the prior year shall be delivered to the Department no later than the last day in April each year. A full description of the Fair Housing Sponsor Report is contained in subsection (j) of this section.

(2) The Department maintains the information reported by the Fair Housing Sponsor Report pursuant to §2306.0724(c) of the Texas Government Code in electronic and hard-copy formats available at no charge to the public.

(3) Rental developments funded or administered by the Department, including HOME, Housing Trust Fund, the FDIC's Affordable Housing Program, and any other rental programs funded or administered by the Department shall provide tenant information provided on Part B, "Unit Status Report," at least quarterly during lease up and until occupancy requirements are achieved. Once the Department has determined that all occupancy requirements are satisfied, the Development shall submit the Unit Status Report at least annually and as required by this subsection.

(4) Developments financed by tax exempt bonds issued by the Department shall report quarterly throughout the Qualified Project Period or until released by the Department.

(5) The Department requires all Owners of properties administered by the Department to submit the Unit Status Report in the electronic format developed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed with the Department no later than January 31, 2005. Developments that are awarded funds in the future must submit the required forms no later than January 31st of the year following the award. The department will provide general instruction regarding the electronic transfer of data. The Department may at its discretion waive the online reporting requirements. In the absence of a written waiver, all developments are required to submit the Unit Status Report online.

(6) Information regarding housing for persons with disabilities. Owners of state or federally assisted housing developments with 20 or more housing units must report information regarding housing units designed for persons with disabilities pursuant to §2306.078. This information will be reported on the Department's internet site and will include the following:

(A) the name, if any, of the development;

(B) the street address of the development;

(C) the number of housing units in the development that are designed for persons with disabilities and that are available for lease;

(D) the number of bedrooms in each housing units designed for a person with a disability;

(E) the special features that characterize each housing unit's suitability for a person with disabilities;

(F) the rent for each housing unit designed for a person with a disability; and

(G) the telephone number and name of the development manager or agent to whom inquiries by prospective tenants may be made.

(j) Fair Housing Sponsor Report Certification and Review.

(1) On or before February 1st of each year of the affordability period, the Department will send each rental Development Owner a reminder that the Fair Housing Sponsor Report (forms available on the Department's website) must be completed by the Owner and returned to the Department on or before the applicable deadline. The Department may require some or all of the Fair Housing Sponsor Report to be submitted electronically. The Fair Housing Sponsor Report shall consist

(A) Part A, "Owner's Certification of Program Compliance";

(B) Part B, "Unit Status Report";

(C) Part C, "Tenant Services Provided Report"; and

(D) Part D, "Owner's Financial Certification".

(2) Penalties and sanctions are assessed in accordance with §1.11(d) of this title for failure to provide the Fair Housing Sponsor Report in part or entirety, including administrative penalties and denial of future requests for Department funding.

(3) Any Development for which the Fair Housing Sponsor Report Part A, "Owner Certification of Program Compliance," is not received or is received past due will be considered not in compliance with these rules. If Part A is incomplete, improperly completed or not signed by the Development Owner, it will be considered not received and not in compliance with these rules. The Department will report to the IRS via form 8823, Low-Income Housing Credit Agencies Report of noncompliance or Building Disposition, any Housing Tax Credit development that fails to comply with this section. The Fair Housing Sponsor Report Part A shall include at a minimum the following statements of the Development Owner:

(A) the Development met the minimum set aside test which was applicable to the Development;

(B) there was no change in the Applicable Fraction or low income set aside of any building, or if there was such a change, the actual Applicable Fraction is reported to the Department (HTC only);

(C) the Development Owner has received an annual income certification from each low income resident and documentation to support that certification, in the manner and form required by the Department's Compliance Manual, as may be amended from time to time;

(D) documentation is maintained to support each low income tenant's income certification, consistent with the determination of annual income and verification procedures under Section 8 of the United States Housing Act of 1937 ("Section 8"), notwithstanding any rules to the contrary for the determination of gross income for federal income tax purposes. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the Development Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Manual;

(E) each low income unit in the Development was rent-restricted under the Land Use Restriction Agreements and applicable program regulations, including IRC Code, §42(g)(2), 24 CFR Part 92, and the owner maintained documentation to support the utility allowance applicable to such unit;

(F) All low income units in the Development are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) of the Code) (HTC and Bond only);

(G) No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601 - 3619, has occurred for this Development. A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a (a)(1), or an adverse judgment from a federal court.

(H) each unit or building in the Development is, and has been, suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the Development during this reporting period. If a violation report or notice was issued by the governmental unit during this reporting period, the Development Owner must provide the Department with a copy of the violation report or notice. In addition, the Development Owner must state whether the violation has been corrected;

(I) each unit meets conditions set by Housing Quality Standards and an annual inspection to confirm the condition has been performed; (HOME only)

(J) there has been no change in the Eligible Basis (as defined by §42(d) of the Code) for any building in the Development since the last certification or, if changes, the nature of the change; (HTC only)

(K) all tenant facilities included in the original application, such as swimming pools, other recreational facilities, washer/dryer hook ups, appliances and parking areas, were provided on a comparable basis to any tenants in the Development.

(L) Residents have not been charged for the use of any nonresidential portion of the building that was included in the building's Eligible Basis under §42(d) of the Internal Revenue Code, (HTC only);

(M) if a low income unit in the Development became vacant during the year, reasonable attempts were made, or are made, to rent that unit or the next available unit of comparable or smaller size to a qualifying low income household before any other units in the Development were, or will be, rented to non low income households; (HTC and tax exempt bonds only)

(N) if the income of tenants of a low income unit in the Development increased above the appropriate limit allowed, the next available unit of comparable or smaller size was, or will be, rented to residents having a qualifying income;

(O) a LURA including an Extended Low Income Housing Commitment as described in §42(h)(6) of the Internal Revenue Code, was in effect for buildings subject to §7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 103 Stat. 2106, 2308 - 2311, including the requirement under §42(h)(6)(B)(iv) of the Internal Revenue Code, that a Development Owner cannot refuse to lease a unit in the Development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to §1314c(b)(4) of

the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 312, 438 - 439) (HTC only);

(P) the Development Owner has not been notified by the IRS that the Development is no longer "a qualified low income housing Development" within the meaning of §42 of the Internal Revenue Code; (HTC only)

(Q) if the Development Owner is required to be a Qualified Nonprofit Organization under §42(h)(5) of the Internal Revenue Code, that a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning under §469(h) of the Internal Revenue Code,(HTC only);

(R) no low income units in the Development were occupied by ineligible full time student households; (HTC and tax exempt bonds only)

(S) no change in the ownership of the Development has occurred during the reporting period or changes and transfers were or are reported;

(T) the Development met all representations of the Development Owner in the Application and complied with all terms and conditions which were recorded in the LURA;

(U) the Development has made all required lender deposits, including annual reserve deposits;

(V) the street address and municipality or county in which the Development is located;

(W) the name, address contact person and telephone number of the property management or leasing agent;

(X) any additional information as required by the Department.

(4) Review. Department staff will review Part A of the Fair Housing Sponsor Report for compliance with the requirements of the appropriate program including §42 of the Internal Revenue Code.

(k) Record retention provisions. Each Development that is administered by the Department including the FDIC's Affordable Housing Program is required to retain the records as required by the specific funding program rules and regulations. In general, retention schedules include but are not limited to the provision of paragraphs (1) - (4) of this subsection;

(1) Housing Tax Credits records, as described in subsection (h) of this section, must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

(2) Retention of records for HOME rental developments must comply with the provisions of 24 CFR 92.508(c), which generally requires retention of rental housing records for five years after the affordability period terminates.

(3) Housing Trust Fund rental developments must retain tenant files for at least three years beyond the date the tenant moves from the development. Records pertinent to the funding of the award, including but not limited to the application, development costs and documentation, must be retained for at least five years after the affordability period terminates.

(4) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

(l) Inspection provision. The Department retains the right to perform an on-site inspection of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs, through the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later.

(1) The Department will perform on-site inspections and file reviews of each low income Development. The Department will conduct the first review of Housing Tax Credit Developments by the end of the second calendar year following the year the last building in the Development is placed in service. The Department will schedule the first review of all other Developments as leasing commences. Subsequent reviews will occur at least once every three years during the compliance period. The Department will monitor at least 15% of the low income resident files in each Development, and review the income certifications, the documentation the Development Owner has received to support the certifications, the rent records and any additional information that the Department deems necessary. The Department will also conduct a physical inspection of the Development including the exterior of the development, development amenities, and an interior inspection of a sample of units.

(2) The Department may, at the time and in the form designated by the Department, require the Development Owners to submit, information on tenant income and rent for each low income unit and may require a Development Owner to submit, copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(3) The Department will select the low income units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular unit, tenant records or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an on-site inspection or a tenant record review will occur, so that the Development Owner may notify tenants of the inspection or assemble original tenant records for review.

(4) The Department will conduct a limited inspection for compliance with accessibility requirements under the Fair Housing Act or §504 of the Rehabilitation Act of 1973. If determined necessary the Department may make referrals to appropriate federal and state agencies or order third-party inspections to be paid for by the Development owner.

(5) Exception: The Department may, at its discretion, enter into a Memorandum of Understanding with the United States Department of Agriculture Rural Housing Service (TX-USDA-RHS), whereby the TX-USDA-RHS agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed under its Section 515 program. Owners of such buildings may be exempted from the inspection provisions, however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions are met, the Development Owner must provide the Department with additional information or the Department will inspect according to the provisions contained herein. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TX-USDA-RHS, which includes persons with disabilities.

(m) Inspection Standard. To determine compliance with property condition standards the Department shall review any local health, safety, or building code violation reports , or notices In the absence of

local health, safety and building code violation reports and if deemed necessary by the Department, inspections by third-party inspectors may be requested and will be relied upon to determine compliance with property condition standards. In addition to the review of any local health, safety or building code violation reports, the Department may conduct inspections of the units using the Housing Quality Standards and may use those standards to determine compliance with property condition standards. Developments must maintain property condition standards throughout the affordability period. Housing Tax Credit Developments that fail to comply with local codes must be reported to the IRS.

(n) Notices to Owner. The Department will provide prompt written notice to the Development Owner if the Department does not receive the Fair Housing Sponsor Report or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42. The notice will specify a correction period which will not exceed 90 days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six months from the date of the notice to the Development Owner if it determines there is good cause for granting an extension. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information including address and phone number.

(o) Notice to the IRS. (Housing Tax Credit Developments only)

(1) Regardless of whether the non-compliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department), but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the non-compliance and will indicate whether the Development Owner has corrected the non-compliance.

(2) If a particular instance of non-compliance is not corrected within three years after the end of the permitted correction period, the Department is not required to report any subsequent correction to the IRS.

(3) The Department will retain records of non-compliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. The Department will retain the Fair Housing Sponsor Reports and records for three years from the end of the calendar year the Department receives the certifications and records.

(4) The Department will send the owner of record copies of any 8823s submitted to the IRS. Copies of 8823s will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development owner is responsible for providing the name and mailing address of the syndicator.

(p) Notices to the Department. If any of the events in paragraphs (1) through (6) occur, written notice must be provided within the timeframes listed below:

(1) Any sale, transfer, exchange, or renaming of the Development or any portion of the Development. Notification must be provided at least 30 days prior to this event. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development. Any transfers of ownership must follow procedures as required by the Department (§2306.852 of the Texas Government Code);

(2) The mailing address of the owner changes. Notification must be provided within 30 days of the address change.

(3) The last building in the Development is placed in service. Notification must be provided within 30 days of the placement in service of the last building. (HTC only);

(4) The Development suffers in whole or in part a casualty loss. Notification must be provided within 30 days following the event of loss, and

(5) Commencement of leasing activity. Notification must be provided within 30 days following the commencement of leasing activities. In addition, Owners of Tax Exempt Bond Developments shall notify the Department of the date 10 percent of the units are occupied and the date 50 percent of the units are occupied within 90 days of such dates.

(6) Request for a Land Use Restriction Agreement. Request for a LURA must be provided no later than September 1st of the calendar year in which the owner intends to have it recorded. A request for a LURA received after September 1st may not be processed by the Department in the same calendar year.

(q) Utility allowances.

(1) The Department will monitor to determine if Housing Tax Credit and Tax Exempt bond properties comply with published rent limits, which include an allowance for utilities. If residents are responsible for some or all utilities, Development owners must use a Utility Allowance that complies with §1.42-10 of the Internal Revenue Code. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

(2) The Department will monitor to determine if HOME and Housing Trust Fund Developments comply with published rent limits, which include an allowance for utilities. Unless otherwise approved by the Department, HOME and Housing Trust Fund Developments must use the utility allowance established by the applicable housing authority. Changes in utility allowances must be implemented on the published effective date.

(r) Material Non-Compliance. For all programs, a Development will be in material noncompliance if the noncompliance is stated in this subsection to be material noncompliance. Developments with more than one program administered by the Department will be scored by program. The Development will be considered in material noncompliance if the score for any single program exceeds the noncompliance limit for that program. The Department may take into consideration the representations of the Applicant regarding compliance violations, however, the records of the Department are controlling.

(1) Each development that is administered by the Department will be scored according to the type and number of non-compliance events as it relates to the Housing Tax Credit Program or other Department programs. All Developments regardless of status that are or have been administered by the Department are scored even if the development no longer actively participates in the program. Unless otherwise specified below, under the Housing Tax Credit program,

non-compliance events issued on Form 8823 are assigned point values. For other programs administered by the Department, unless otherwise specified below, non-compliance events identified during on-site monitoring reviews are assigned point values.

(2) Uncorrected non-compliance will carry the maximum number of points until the non-compliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected non-compliance will no longer be included in the Development score three years after the date the non-compliance was reported corrected by the Department.

(A) Under the Housing Tax Credit Program, non-compliance events that occurred and were identified by the Department through the issuance of the IRS Form 8823 prior to January 1, 1998, are assigned corrected point values to each non-compliance event. The score for these events will no longer be included in the Development's score three years after the date the Form 8823 was executed.

(B) The score in effect on the date the Housing Tax Credit program application round closes or the date of the filing of Volume I of the application for a Tax Exempt Bond Development will determine if any rental development disclosed on previous participation forms is in material noncompliance.

(C) Any corrective action documentation affecting the compliance status score must be received by the Department thirty days prior to the date the Housing Tax Credit Program Application Round closes or thirty days prior to the submission of Volume I of the application for a Tax Exempt Bond Development.

(3) Events of non-compliance are categorized as either "development events" or "unit/building events." Development events of non-compliance affect some or all the buildings in the development; however, the development will receive only one score for the event rather than a score for each building. Other types of non-compliance are identified individually by unit. This type of non-compliance will receive the appropriate score for each unit cited with an event. The unit scores and the development scores accumulate towards the total score of the Development. Violations under the Housing Tax Credit program are identified by unit; however, the building is scored rather than the unit, and the building will receive the non-compliance score if one or more of the units are in non-compliance.

(4) Each type of non-compliance is assigned a point value. The point value for non-compliance is reduced upon correction of the non-compliance. The scoring point system and values are as described in subparagraphs (A) and (B) of this paragraph. The point system weighs certain types of non-compliance more heavily than others; therefore certain non-compliance events carry a sufficient number of points to automatically place the development in Material Non-Compliance. However, other types of non-compliance by themselves do not warrant the classification of Material Non-Compliance. Multiple occurrences of these types of non-compliance events may produce enough points to cause the development to be in Material Non-Compliance.

(A) Development Non-Compliance items are identified in clauses (i) - (xxvii) of this subparagraph.

(i) Major property condition violations. The development displays major violations of health, safety and building codes. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 20 points.

(ii) Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 10 points.

(iii) Development is not available to general public. Determination of violation under the Fair Housing Act. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 10 points.

(iv) Development is out of compliance and never expected to comply. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section.

(v) Owner failed to pay fees or allow on-site monitoring review. Points will be assigned to this event after written notification to the Development owner. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 5 points.

(vi) LURA not in effect. The LURA was not executed within the required time period. Uncorrected, this is material noncompliance. This event will be assigned points upon written notification to the owner. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 5 points.

(vii) Developments awarded Housing Tax Credits January 1, 2004, or later, that are foreclosed by a lender, or the General Partner is removed by a syndicator due to reasons other than market conditions. Points associated with a foreclosure will be assigned at the time the 8823 is sent to the IRS. Points associated with the removal of the General Partner will be assigned upon written notification to the former General Partner. 25 points.

(viii) Development failed to meet minimum low-income occupancy levels. Development failed to meet required minimum low-income occupancy levels of 20/50 (20% of the units occupied by tenants with household incomes of less than or equal to 50% of Area Median Gross Income) or 40/60. Uncorrected is 20 points. Corrected is 10 points. (HTC and BOND only)

(ix) No evidence of, or failure to certify to, nonprofit material participation for Owner having received an allocation from the Nonprofit Set-Aside. Uncorrected is 10 points. Corrected is 3 points.

(x) The Development failed to meet additional State required rent and occupancy restrictions. The LURA requires the Development to lease units to low income households at multiple income and rent tiers. This event refers to the condition when the lower tiers are not satisfied. Uncorrected is 10 points. Corrected is 3 points.

(xi) The Development failed to provide required supportive services as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xii) The Development failed to provide housing to the elderly as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xiii) Failure to provide special needs housing. Development has failed to provide housing for tenants with special needs as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(xiv) The Development Owner failed to provide required annual notification to local administering agency for the Section 8 program. Uncorrected is 5 points. Corrected is 2 points.

(xv) Changes in Eligible Basis. Changes occur when common areas become commercial, fees are charged for facilities, etc. Uncorrected is 10 points. Corrected is 3 points. (HTC Development only)

(xvi) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 3 points. Corrected is 1 point.

(xvii) Failure to submit part or all of the Fair Housing Sponsor Report or failure to submit any other annual, monthly, or quarterly report required by the Department. Uncorrected is 10 points. Corrected is 3 points.

(xviii) Owner failed to make available or maintain management plan with required language as required under §1.14 of this title. Uncorrected is 3 points. Corrected is 1 point.

(xix) Owner failed to approve and distribute Affirmative Marketing Plan as required under §1.14 of this title. Uncorrected is 3 points. Corrected is 1 point.

(xx) Pattern of minor property condition violations. Development displays a pattern of property violations; however, those violations do not impair essential services and safeguards for tenants. Uncorrected is 5 points. Corrected is 2 points.

(xxi) Development failed to comply with requirements limiting minimum income standards for Section 8 residents. Complaints verified by the Department regarding violations of the income standard which cause exclusion from admission of Section 8 resident(s) results in a violation. Uncorrected score 10 points. Corrected 3 points.

(xxii) Owner defaults on payments of Department loans for a period exceeding 90 days. Uncorrected, this is material noncompliance. Points will be assigned under this event after written notice to the Development Owner. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 10 points.

(xxiii) Utility allowance not calculated properly. Uncorrected 3 points, Corrected 1 point.

(xxiv) Failure to comply with the Next Available Qualifying Unit Rule. Uncorrected 3 points. Corrected 1 point.

(xxv) Owner failed to execute required lease provisions or exclude prohibited lease language. Uncorrected 3 points. Corrected 1 point (All programs, except Housing Tax Credits)

(xxvi) Failure to provide annual Housing Quality Standards inspection. Uncorrected 10 points. Corrected 3 points. (HOME Only)

(xxvii) Development has failed to establish and maintain a reserve account in accordance with §1.37 of Title 10, Texas Administrative Code. Points will be assigned under this event after written notice to the Development Owner. Uncorrected, this is material noncompliance. Uncorrected is equal to the material noncompliance status threshold score as defined in subsection (b)(7) of this section. Corrected is 10 points.

(B) Unit Non-Compliance items are identified in clauses (i) - (x) of this subparagraph.

(i) Unit not leased to Low Income Household. Development has units that are leased to households whose income was above the income limit upon initial occupancy. Uncorrected is 3 points. Corrected is 1 point

(ii) Low-income units occupied by nonqualified full-time students. Uncorrected is 3 points. Corrected is 1 point. (HTC and Bond only)

(iii) Low income units used on transient basis. Uncorrected is 3 points. Corrected is 1 point. (HTC and Bond only)

(iv) Household income increased above the re-certification limit and available Unit was rented to market tenant. Uncorrected is 3 points. Corrected is 1 point.

(v) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction. Uncorrected is 3 points. Corrected is 1 point.

(vi) Failure to maintain or provide tenant income certification and documentation. Uncorrected is 3 points. Corrected is 1 point.

(vii) Casualty loss. Units not available for occupancy due to natural disaster or hazard due to no fault of the Owner. This carries no point value. Casualty losses are reported to the IRS on HTC Developments.

(viii) When a low income Unit became vacant, owner failed to lease (or make reasonable efforts to lease) to a low income household before any units were rented to tenants not having a qualifying income. Uncorrected 3 points. Corrected 1 point.

(ix) Unit not available for rent. Unit is used for non-residential purposes excluding unavailable Units due to casualty and manager-occupied Units. Uncorrected is 3 points. Corrected is 1 point.

(x) Qualifying unit designation removed from household. Uncorrected 3 points. Corrected 1 point. (FDIC's Affordable Housing Program only)

(s) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and applicants and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expediously resolve disputes. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's 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.

(t) Liability. Compliance with the program requirements including compliance with the Code, §42, is the sole responsibility of the Development owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner including the Development Owner's non-compliance with §42 the Internal Revenue Code, the HOME program regulations, the Tax Exempt Bond program requirements, and all other program monitored by the Department.

(u) Applicability to all programs. These provisions apply to all Developments administered by the Department including the FDIC's Affordable Housing Program

(v) Waiver. The Board, in its discretion and within the limits of law, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

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 September 13, 2004.

TRD-200405658
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-4595

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 59. CONTINUING EDUCATION REQUIREMENTS

16 TAC §§59.1, 59.3, 59.10, 59.20, 59.21, 59.30, 59.51, 59.80, 59.90

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, Chapter 59, Continuing Education, §§59.1, 59.3, 59.10, 59.20, 59.21, 59.30, 59.51, 59.80, and 59.90. Senate Bill 279, 78th Legislature, added §51.405 to the Department's enabling statute, Texas Occupations Code, Chapter 51. Section 51.405 requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders. In response to this legislative mandate, the new rules are proposed to establish requirements for continuing education providers and courses. The new rules are rules of general applicability that eventually would apply to all occupations regulated by the Department that are subject to a continuing education requirement. At the present time, however, the new rules reference only the occupation of electricians, which will be the first occupation to which the new rules will apply.

Section 59.1 recites the statutory authority for the new Chapter 59.

Section 59.3 states that the purpose of the new chapter is to establish continuing education provider and course requirements and lists the occupations to which the chapter applies.

Section 59.10 defines relevant terms used in the new chapter.

Section 59.20 establishes requirements for continuing education providers to register with the Department. This section requires a person to be registered as a provider before providing or offering to provide continuing education courses. To be registered as a provider, a person must file a completed application with the Department and pay applicable fees. The applicant must obtain a separate registration for each occupation for which the applicant wishes to provide continuing education courses. In addition, the applicant must demonstrate the capability to meet the requirements of Chapter 59 and other applicable Department requirements.

Section 59.21 describes the manner of renewal of a provider registration. A provider registration is valid for one year and may be renewed at the end of the registration period. The provider may renew by filing a completed renewal application and paying applicable fees.

Section 59.30 establishes requirements for continuing education courses. A continuing education course must be approved by the Department before being offered, and a provider must obtain a separate course approval for each occupation which will be awarded continuing education credit for a particular course. Course approvals are valid for one year, unless the provider's registration expires before the end of the one-year period, and must be submitted annually for approval. To obtain approval for a course, a provider must file a completed application and pay applicable fees. The provider must include with the application copies of course materials and certain other relevant information that will enable the Department to evaluate the course content and manner of presentation. The section sets specific requirements for course materials and course content. To enable the Department to determine compliance with the new chapter, Department employees and representatives may conduct audits of providers and courses.

Section 59.51 lists the responsibilities of providers and states that providers are responsible for the conduct and administration of courses. A provider must ensure that courses are delivered in a manner conducive to learning. The section identifies certain information that must be included in a provider's advertisements. The provider is responsible for ensuring that instructors possess the requisite subject matter knowledge and teaching ability. Not later than five days after completion of a course, the provider must issue a certificate of completion to each participant and submit a course completion report to the Department.

Section 59.80 sets fees for provider applications, provider renewal applications, course approvals, and issuance of revised or duplicate registrations. As required by §51.202, Occupations Code, the fees are set in amounts which the Department anticipates to be reasonable and necessary to cover the costs of administering the new chapter. All fees paid to the Department are non-refundable.

Section 59.90 provides for the Department to assess administrative penalties under §51.301 and §51.302, Occupations Code, and administrative sanctions under §51.353, Occupations Code, against a person who violates the new chapter or any provision of a statute or rule administered by the Department. The section enumerates additional actions that are considered violations of the new chapter.

These rules are necessary to implement §51.405, Occupations Code. The rules set reasonable minimum standards for continuing education providers and courses. These standards are necessary for the Department to ensure the quality and relevance of continuing education programs for license holders.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be additional costs to the Department from enforcing and administering the new rules and additional revenue generated from new fees. Because the number of potential continuing education providers is unknown, the Department is unable to estimate the additional costs or revenue. It is anticipated that there will be no net fiscal impact to state government because revenue from the new fees should be sufficient to cover additional costs. There will be no cost to local government as a result of enforcing or administering the new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be that continuing education taken by license holders will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of license holders, who in turn provide services to the public.

The probable economic costs to persons required to comply with the proposed rules and the effect on small or micro-businesses would be the following. Providers would be required to pay $800 annually, for each occupation for which the provider offers continuing education. For each course, the provider would be required to pay $100 annually, for each occupation to which the course is offered for continuing education credit. The total cost to a particular provider would depend on the number of courses offered and the number of occupations served by that provider. In addition, a provider would be charged $25 for a revised or duplicate registration.

A provider may incur some costs in furnishing copies of course materials to the Department as part of the course approval application. This cost would depend on the amount and dollar value of materials involved, which would vary by course, and so the Department is unable to provide an estimate. There would be no adverse economic effect on small or micro-businesses.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, §51.405, Occupations Code requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Texas Occupations Code, Chapter 1305. No other statutes, articles, or codes are affected by the proposal.

§59.1. Authority.

These rules are promulgated under the authority of Texas Occupations Code, §51.405.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation: Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

§59.10. Definitions.

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

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

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

(3) Continuing Education Courses or Courses--Department-approved courses that may be completed to satisfy continuing education requirements.

(4) Continuing Education Provider or Provider--A person registered by the department to offer continuing education courses.

(5) Day--A calendar day.

§59.20. Provider Registration.

(a) Continuing education providers must be registered with the department to provide or offer to provide continuing education courses.

(b) A separate provider registration is required for each occupation (electrician, auctioneer, etc.) for which an applicant wishes to provide continuing education courses.

(c) To register, an applicant shall:

(1) file a completed application on the appropriate department-approved form; and

(2) pay all applicable fees.

(d) To be registered as a provider, an applicant must demonstrate the capability to meet the requirements of this chapter and other applicable department requirements.

§59.21. Provider Registration Renewals.

(a) Provider registrations are valid for one year and may be renewed at the end of each registration period.

(b) To renew a registration, a provider shall:

(1) file a completed application for renewal on the appropriate department-approved form; and

(2) pay all applicable fees.

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

§59.30. Continuing Education Courses.

(a) Each continuing education course offered by a provider must be approved by the department before being offered.

(b) A provider must obtain a separate course approval for each occupation (electrician, auctioneer, etc.) which will be awarded continuing education credit for a particular course.

(c) Except as provided in subsection (d) of this section, course approvals are valid for one year and must be submitted annually for approval.

(d) If a provider's registration expires, all course approvals for that provider expire upon the expiration of the registration.

(e) To obtain approval of a course, a provider must file a completed application on the appropriate department-approved form with all applicable fees.

(f) Each application for course approval shall be accompanied by:

(1) subject matter outline, including time allotted for each segment; and

(2) copies of course materials such as textbooks, videos, tapes, handouts, study materials, and any additional documentation.

(g) Course materials must have the following characteristics:

(1) appropriate grammar, spelling and punctuation;

(2) appropriate illustrations and graphics to show concepts not easily explained in words; and,

(3) a comprehensive presentation of subject matter intended to increase or maintain the skills or competence of the Licensee.

(h) Unless commission rules relating to continuing education requirements for a specific occupation provide otherwise, continuing education courses shall cover one or more of the following aspects in the area of licensure:

(1) technical,

(2) business,

(3) health,

(4) safety,

(5) legal, or,

(6) other relevant topics approved by the department.

(i) Courses designed specifically to promote a manufacturer's product will not be considered for approval.

(j) Upon approval the department will determine the number of hours of continuing education credit for a course.

(k) One hour of continuing education credit is equivalent to 50 minutes of actual instruction time.

(l) The department may not approve courses in increments of less than one hour of continuing education credit.

(m) To determine whether a provider is complying with the requirements of this chapter, department employees and representatives may conduct on-site audits of a provider and any continuing education courses offered by a provider. Audits may be conducted without prior notice to the provider, and department employees and representatives may enroll and attend a course without identifying themselves as employees or representatives of the department.

(n) Department employees and representatives performing an audit may not be required to pay any fee to a provider for enrolling in or attending a course.

§59.51. Responsibilities of Providers.

(a) A provider must ensure that courses are delivered in a manner conducive to learning.

(b) A provider must include in all advertisements for a continuing education course the provider's number and the course number assigned to it by the department. Provider web page announcements concerning courses are considered advertisements for purposes of this rule.

(c) A provider must ensure that instructors possess both the subject matter knowledge they are teaching as well as the teaching ability required to impart the information.

(d) No later than five days after the course completion date, a provider must issue to each participant who attended the entire course a certificate of completion that includes the following information:

(1) name and number of course;

(2) course completion date;

(3) provider name and number;

(4) number of hours of continuing education credit for which the course is approved;

(5) signature of the provider representative; and

(6) name, license type and license number of the participant who attended.

(e) A provider must submit to the department, on the appropriate department-approved form, a course completion report no later than five days after the course completion date. The report shall include the following information:

(1) name and number of course;

(2) course completion date;

(3) provider name and number;

(4) the location where the course was taught;

(5) the number of participants to whom a certificate was issued; and

(6) the name, license type and license number of each participant to whom a certificate of completion was issued;

(f) A provider must retain participant course completion records for a period of two years after completion of a course.

(g) Upon request, a provider shall provide to a participant, within ten days of the date of the request, copies of the participant's records. A reasonable fee to cover copying costs may be charged to the participant.

(h) Upon request, a provider shall provide information, including copies of specified records, to the department within ten days of the date of the request.

(i) A provider shall cooperate fully with the department, its employees and representatives in the investigation of a complaint or performance of an audit.

(j) A provider may not publish false or misleading advertisements.

(k) An advertisement which contains a fee charged by a provider shall display all fees for the course in the same place in the advertisement and with the same degree of prominence. If the provider requires participants to purchase course materials which are not included in the tuition, such fees must appear in the advertisement.

(l) Providers are responsible for the conduct and administration of their courses, including the punctuality of classroom sessions, verification of participant attendance and instructor performance. Providers shall ensure that their courses are administered in substantially the same manner as represented in the application for course approval.

§59.80. Fees.

(a) Provider application fee per occupation: $800.

(b) Provider renewal application fee per occupation: $800.

(c) Course-approval fee per occupation: $100.

(d) Issuance of a revised or duplicate registration: $25.

(e) All fees paid to the department are non-refundable.

§59.90. Sanctions--Administrative Sanctions and Penalties.

(a) If a person violates any provision of this chapter, or any provision of a statute or rule administered by the department, or a commission or executive director order, the department may assess administrative penalties pursuant to Texas Occupations Code, §51.301 and §51.302 or administrative sanctions pursuant to Texas Occupations Code, §51.353.

(b) Any of the following actions by a person is a violation of this chapter and may result in the assessment of administrative penalties or administrative sanctions against the person:

(1) Changing a program teaching method or course content without the approval of the department;

(2) Issuing a certificate of completion to an individual who did not complete the approved course;

(3) Refusing to issue a certificate of completion to an individual who has satisfactorily completed an approved course;

(4) Fraud or misrepresentation in an application process for provider registration or course approval;

(5) Fraud or misrepresentation regarding maintenance of records, teaching method, program content, or issuance of certificates; or

(6) Failing to cooperate with the department in an investigation or audit.

(c) An order of suspension issued under this section may be probated upon reasonable terms and conditions as determined by the commission.

(d) A person will have an opportunity for an administrative hearing pursuant to the provisions of Chapter 2001, Government Code if the department proposes to assess any administrative penalties or sanctions.

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 September 13, 2004.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 463-7348

CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

16 TAC §§71.1, 71.10, 71.22, 71.25, 71.70, 71.90

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§71.1, 71.10, 71.22, 71.25, 71.70, and 71.90 regarding the warrantors of vehicle protection products program.

The amendments are made to implement provisions of Senate Bill 279, 78th Legislature and the codification of the Vehicle Protection Product Warrantors statute from Texas Civil Statutes, Article 9035 to Texas Occupations Code, Chapter 2306, made by House Bill 3507, 78th Legislature. The changes include updating statutory references and removing obsolete terms, such as "commissioner."

The amendments are necessary to make the rules more concise and to make them more accurately reflect the statute.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be that the rules reflect statutory changes and that unnecessary rule language has been deleted making the rules more concise.

There will be no effect on small or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to person who are required to comply with the rules as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 2306 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 2306 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§71.1. Authority.

These rules are promulgated under the authority of Texas Occupations Code, Chapters 51 and 2306 [~~Title 132, Texas Civil Statutes, Chapter 20, Article 9035, and Title 2, Texas Occupations Code, Chapter 51~~].

§71.10. Definitions.

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

(1) Applicant--A person who submits to the department an application to be a warrantor of vehicle protection products.

[~~(2) Commissioner--As used in Texas Civil Statutes, Article 9035, and in these rules, has the same meaning as Executive Director.~~]

[~~(3) Executive Director--As used in Texas Civil Statutes, Article 9035, and in these rules, has the same meaning as Commissioner~~]~~.~~

(2) [~~(4)~~] Financial statements--A balance sheet, income statement, statement of cash flows, and statement of equity reflecting the financial condition of the subject, prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(3) [~~(5)~~] Net worth--The excess of total assets over total liabilities as reflected in audited financial statements.

(4) [~~(6)~~] Nonpublic information--Information regarding an individual that is derived from the offering of vehicle protection products and vehicle protection product warranties, the sale of such products and warranties, and claims made under such warranties. The term does not include customer names, addresses, and telephone numbers, but does include customer financial and credit information as well as information concerning the price paid for a vehicle protection product or vehicle protection product warranty, the type of vehicle protection product purchased, the terms and conditions of any warranty, the expiration date of any warranty, the facts and circumstances involved in any claim made on a warranty, and the claim history of an individual. The term also includes information prohibited from disclosure by statute.

(5) [~~(7)~~] Registrant--A person approved by the department to be a warrantor of vehicle protection products.

§71.22. Registration Requirements--Financial Security Requirements.

(a) Each applicant and registrant may comply with the financial security requirement under Texas Occupations Code, Chapter 2306 [~~Article 9035~~] by submitting to the department the information required by one of the following four subsections:

(1) proof of a reimbursement insurance policy described in Texas Occupations Code, Chapter 2306 [~~Article 9035~~];

(2) an audit report and audited financial statements for its most recent fiscal year which demonstrate that either the applicant or the registrant, or the parent corporation of the applicant or registrant, if there is one, had a net worth of at least $50 million as of the end of its most recent fiscal year;

(3) the audit report of an independent certified public accountant stating the auditor's unqualified opinion concerning the financial statements of the applicant or registrant as of the end of its most recent fiscal year, together with a certification from the same accountant who performed the audit that the applicant or registrant had a net worth in excess of $50 million as of the end of the period audited; or

(4) the audit report of an independent certified public accountant stating the auditor's unqualified opinion concerning the financial statements of the parent corporation of the applicant or registrant as of the end of the parent corporation's most recent fiscal year, together with a certification from the same accountant who performed the audit of the parent corporation that it had a net worth in excess of $50 million as of the end of the period audited.

(b) If the applicant or registrant relies upon the net worth of its parent corporation to satisfy the financial security requirements of Texas Occupations Code, Chapter 2306 [~~Article 9035~~], then the applicant or registrant must furnish sufficient written proof that the parent corporation has agreed to guarantee the liabilities and obligations of the applicant or registrant relating to vehicle protection products sold or offered for sale by the applicant or registrant in this state.

(c) Notwithstanding the other provisions of this section, an applicant or registrant shall promptly provide all financial statements and information to the executive director or his designate that are requested in writing by the executive director or his designate.

§71.25. Registration Requirements--Renewal.

(a) A complete application for registration renewal must be submitted on an approved Department form with all required fees and must be filed by the expiration date, or the registration will expire.

(b) Non-receipt of a registration renewal notice from the Department does not exempt a person from any requirements of this chapter.

(c) A person shall not perform work requiring registration under Texas Occupations Code, Chapter 2306 [~~Civil Statutes, Article 9035~~] with an expired registration.

§71.70. Responsibilities of Registrant.

(a) A registrant must provide the following written notification to all consumers of its vehicle protection product and warranties: "Regulated by the Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599." The notification shall be provided on all warranty contracts.

(b) A registrant shall notify the department in writing within thirty (30) days of any change in the information set forth in the registrant's application.

(c) A registrant shall allow the department to audit, examine, and copy any and all records maintained by the registrant pursuant to Texas Occupations Code, Chapter 2306 [~~Article 9035~~] or relating to vehicle protection products sold or offered for sale in this state.

(d) A registrant shall provide a copy of the vehicle protection product warranty to the consumer within 10 days from the date of purchase.

(e) A registrant shall not disclose nonpublic information obtained in connection with the sale in this state of a vehicle protection product warranty or claims made under such a warranty, except to an entity acting on behalf of the registrant to perform the functions required to implement the vehicle protection product warranty who agrees not to disclose the nonpublic information.

(f) An entity acting on behalf of the registrant under subsection (e) shall not disclose nonpublic information unless it is necessary to fulfill the terms and conditions of the consumer's warranty.

§71.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapter 2306 [~~Title 132, Texas Civil Statutes, Chapter 20, Article 9035~~], any provision of [~~Title~~] 16 [~~,~~] Texas Administrative Code, Chapter 71, or any provision of an order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Texas Occupations Code, Chapter 2306 [~~Title 132, Texas Civil Statutes, Chapter 20, Article 9035~~]; [~~Title 2~~] Texas Occupations Code, Chapter 51; and [~~Title~~]16 [~~,~~] Texas Administrative Code, Chapter 60 of this title (relating to the Texas Commission [~~Department~~] of Licensing and Regulation.)

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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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CHAPTER 72. STAFF LEASING SERVICES

The Texas Department of Licensing and Regulation ("Department") proposes amendments to §§72.80 and 72.81 the repeal of §72.82 regarding the staff leasing services program.

Amendments to §72.80 propose to lower the application/administrative fee, the renewal application/administrative fee, and the limited license application/administrative fee from $300 to $150, remove unnecessary language, and change the name of the fee to application fee. The repeal of §72.82 will eliminate the non-refundable fee for a background check. This fee is unnecessary because the Department anticipates that the cost of conducting background checks will be adequately covered by other fees in Chapter 72. Elimination of this fee is necessary for the Department to comply with its responsibility under Texas Occupations Code, §51.202. The amendments to §72.81 propose to lower the license and renewal fee for 0-249 employees from $1,000 to $250; for 250-750 employees from $1,500 to $500; and for more than 750 employees from $2,000 to $750. Texas Occupations Code, §51.202 requires the Department to set fees in amounts reasonable and necessary to cover the costs of administering programs under its jurisdiction. The Department conducted its annual fee review pursuant to §51.202 and recommended to the Texas Commission of Licensing and Regulation ("Commission") that the referenced fees be reduced as indicated. The revenue generated by current fees exceeds the amount required by the Department to cover costs of administering the staff leasing services program. On August 9, 2004, the Commission directed the Department to initiate the recommended fee reductions.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and repeal are in effect there will be no cost to state or local government as a result of enforcing or administering these sections.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and repeal are in effect, the public benefit will be lower application and license costs.

The Department anticipates decreased economic costs to licensees, small businesses, micro-businesses, or other persons who are required to comply with the sections as proposed because of the proposed fee reductions.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §72.80, §72.81

The amendments are proposed under Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the proposal are those set forth in Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§72.80. Fees--Licensing Application

(a) All application fees are non-refundable.

(b) The application [~~/administrative~~] fee shall be $ 150 [~~300 per application~~].

(c) The renewal application [~~/administration~~] fee shall be $ 150 [~~300 per application~~].

(d) The limited license application [~~/administration~~] fee shall be $ 150 [~~300~~].

§72.81. Fees--Licensing

(a) The license and timely renewal licensing fee shall be:

(1) $ 250 [~~1,000~~] for 0 to 249 assigned employees;

(2) $ 500 [~~1,500~~] for 250 to 750 assigned employees; and,

(3) $ 750 [~~2,000~~] for more than 750 assigned employees.

(b) The limited staff leasing services license shall be $750.

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

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 September 13, 2004.

TRD-200405652
William H. Kuntz. Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 463-7348

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16 TAC §72.82

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

The repeal is proposed under Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51, §§51.201, 51.202, and 51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and which requires the Commission to set fees in amounts reasonable and necessary to cover the costs of administering Department programs.

The statutory provisions affected by the repeal are those set forth in Texas Labor Code, Chapter 91 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

§72.82. Fees--Background Check.

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 September 13, 2004.

TRD-200405651
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 463-7348

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CHAPTER 73. ELECTRICIANS

16 TAC §73.25

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at 16 Texas Administrative Code, §73.25 concerning continuing education requirements in the electricians program. Texas Occupations Code, §1305.168 requires four hours of continuing education to renew an electrician license. Subsection 1305.168(c) states that the executive director by rule shall approve continuing education courses, course content, and course providers. General requirements for continuing education providers and courses are contained in proposed rules at 16 Texas Administrative Code, Chapter 59. The new §73.25 establishes requirements, that are specific to the electricians program, for licensees, providers, and courses.

The new rule requires a licensee to complete four hours of continuing education in Department-approved courses to renew a license. The continuing education hours must be completed during the term of the current license or, in the case of a late renewal, within one year prior to the date of renewal. A licensee may not receive credit for attending the same course more than once for one renewal. A licensee is required to retain a copy of the certificate of completion for one year after the date of completion of the course.

Subsection (e) implements Texas Occupations Code, §1305.168(b), regarding the subject matter of continuing education courses. Subsection (e) requires a licensee to complete a course, or combination of courses, dedicated to instruction in both the National Electric Code, as adopted under Texas Occupations Code, §1305.101, and state law and rules that regulate the conduct of licensees. An individual course need not cover both topics. However, the licensee's total of continuing education hours for a license renewal must include coverage of both topics, whether in one course or in multiple courses.

Subsection (g) requires a provider's course to be dedicated to instruction in either the National Electric Code, as adopted under Texas Occupations Code, §1305.101, state law and rules that regulate the conduct of licensees, or both topics.

Subsection (h) allows licensees, under certain limited circumstances, to receive continuing education credit for hours of instruction completed before the date of course approval. The subsection applies only to courses for which a course approval application is filed prior to January 1, 2005 and is subsequently approved by the Department. The provider may submit to the Department a completion report showing hours of instruction completed from March 1, 2004 to the date of course approval. Continuing education credit will be awarded to participants who complete such hours of instruction if the provider submits sufficient documentation to show that the hours of instruction were substantially similar to the course subsequently approved by the Department. The provider must submit the completion report to the Department within 30 days after the course approval date. This subsection is necessary to allow licensees who will renew licenses beginning in March 2005 sufficient time to satisfy continuing education requirements.

Subsection (i) states that 16 Texas Administrative Code §59.51(d), relating to the requirement of a provider to issue course completion certificates, does not apply to hours of instruction or courses completed under subsection (h).

This rule is necessary to implement continuing education requirements for electricians, as provided by Texas Occupations Code, §1305.168. In addition, the rule is necessary to implement Texas Occupations Code, §51.405, which requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rule is in effect there will be some additional costs to the Department in approving courses and enforcing requirements of the rule. It is anticipated that revenue from additional fees established in proposed 16 Texas Administrative Code, Chapter 59 would be sufficient to offset additional costs to the state. Because the number of potential continuing education providers is unknown, the Department is unable to estimate the additional costs or revenue. There will be no cost to local government as a result of enforcing or administering the new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the new rule is in effect, the public benefit will be that continuing education taken by electrician licensees will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of licensees, who in turn provide services to the public.

There will be no effect on small or micro-businesses as a result of the proposed new rule. There are no anticipated economic costs to persons who are required to comply with the proposed new rule.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, §1305.168 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the proposal.

§73.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license listed in Texas Occupations Code, §1305.168(a), a licensee must complete four hours of continuing education in courses approved by the department.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal.

For a late renewal, the continuing education hours must have been completed within one year prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once for one renewal.

(e) For each annual renewal, a licensee must complete a course, or combination of courses, dedicated to instruction in:

(1) the National Electrical Code, as adopted under Title 8, Occupations Code §1305.101; and

(2) state law and rules that regulate the conduct of licensees.

(f) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(g) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in:

(1) the National Electrical Code, as adopted under Title 8, Occupations Code §1305.101; and/or

(2) state law and rules that regulate the conduct of licensees.

(h) If a provider files a course approval application prior to January 1, 2005 and the department subsequently approves the course, a provider may submit to the department, within 30 days after the course approval date, a completion report for hours of instruction completed from March 1, 2004 to the course approval date. The completion report must be submitted on the appropriate department-approved form. Continuing education credit will be awarded to a participant under this subsection if the provider submits sufficient documentation to satisfy the department that the hours of instruction offered prior to the course approval date were substantially similar to the course subsequently approved by the department.

(i) Section 59.51(d) of this title does not apply to hours of instruction or courses completed prior to the course approval date under subsection (h) of this section.

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

Filed with the Office of the Secretary of State on September 13, 2004.

TRD-200405650
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 463-7348

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

The Texas State Board of Dental Examiners (Board) proposes the repeal of 22 TAC Chapter 102, §102.1, concerning fees charged by the Board, and proposes new §102.1 to replace it. The proposed new section contains new language to enact certain fee requirements imposed by Senate Bill 1152 and Senate Bill 263, §10 and §19, 78th Legislature. The new section, compared to the current iteration, also contains extensive revisions to clarify and standardize language, and to improve organization.

Section 102.1(a)(4)(A) reflects the addition of the statutorily required $5 online fee for dental licensees, changing the annual dental registration renewal fee from $111 to $116.

Section 102.1(b)(4)(A) reflects the addition of the statutorily required $3 online fee for dental licensees, changing the annual dental registration renewal fee from $66 to $69.

Section 102.1(c)(1) reflects the addition of fees for the new dental assistant registration program, in the amount of $50 for the initial registration, and $25 for the annual renewal.

Section 102.1(c)(2) reflects a proposed reduction in the fees for a pit and fissure sealant certification, in order to help offset the cost to dental assistants who wish to hold both a dental assistant registration and a pit and fissure sealant certification. The initial registration fee has been reduced from $50 to $25, and the annual renewal fee has been reduced from $50 to $15.

Section 102.1(d)(2)(B) reflects the addition of the statutorily required annual $3.00 "e-pay" service fee for dental licensees.

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the repeal and new section are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the proposal.

The public benefit anticipated as a result of enforcing or administering the repeal and new section will be minimal.

The impact on large, small or micro-businesses will be minimal.

The anticipated economic cost to persons as a result of enforcing or administering the repeal and nes section will be negligible. Dental assistants who wish to be able to legally position and expose x-rays will now have to pay a fee as part of the registration requirement. However, the Board has made an effort to keep those fees to a minimum, and has reduced other fees to try to help compensate.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this proposal is published in the *Texas Register*.

22 TAC §102.1

(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 State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §102.1 is proposed under Texas Government Code §§2001.021 et seq Texas Civil Statutes; the Occupations Code

§254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed repeal affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§102.1. Fee Schedule.

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 September 10, 2004.

TRD-200405627
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-0972

22 TAC §102.1

The new section is proposed under Texas Government Code §§2001.021 et seq., Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§102.1. Fee Schedule.

(a) Dentists

(1) Application for licensure by examination:

(A) Initial application/examination--$155; and

(B) Initial assessment by the Texas Legislature for deposit to the General Revenue Fund--$200.

(2) Application for licensure by credentials--$2,005

(3) Application for temporary licensure by credentials--$500

(4) Annual registration renewal:

(A) Annual registration--$116;

(B) Annual peer assistance--$9; and,

(C) Annual assessment by Texas Legislature for deposit to the General Revenue Fund--$200.

(5) Duplicate license--$15

(6) Duplicate renewal certificate--$15

(7) Reactivate a retired license--$50

(8) Sedation/Anesthesia Permit Application:

(A) Initial application--$28.75.

(B) Annual renewal--$5.

(b) Dental Hygienists

(1) Application for licensure by examination--$75

(2) Application for licensure by credentials--$480

(3) Application for temporary licensure by credentials--$100

(4) Annual registration renewal:

(A) Annual registration--$69; and,

(B) Annual peer assistance--$2.

(5) Duplicate license--$15

(6) Duplicate renewal certificate--$15

(7) Reactivate a retired license--$50

(c) Dental Assistants

(1) Dental assistant registration:

(A) Initial application--$50.

(B) Annual renewal--$25.

(2) Pit and fissure sealant certification:

(A) Initial application--$25.

(B) Annual renewal--$15.

(d) Dental Laboratories

(1) Initial application--$105

(2) Annual registration renewal:

(A) Annual registration--$101; and,

(B) Annual e-pay service fee--$3.

(e) Mobile Dental Facilities or Portable Dental Units

(1) Initial application--$50

(2) Annual renewal--$50

(f) Application for dental intern or resident exception tracking (identification) number--$25

(g) Dentist or dental hygienist faculty application--$75

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 September 10, 2004.

TRD-200405628
Bobby D. Schmidt, M.Ed.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 475-0972

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.5, relating to Fees.

The proposed amendments add additional fees which are necessary to implement provisions of SB 1152, 78th Legislature, Regular Session which mandates the collection of an online subscription fee for online renewals for appraiser trainees and state licensed appraisers; and a subscription fee for an original application for certified general, certified residential, state licensed, provisional licensed and appraiser trainee.

The proposed amendments would set an online subscription fee of $5 for an appraiser trainee renewal, $10 for a state licensed appraiser renewal, $10 for a certified general, certified residential, state license and provisional licensed application, $5 for a provisional licensed application, and $5 for an appraiser trainee application.

The proposed amendments would also set a $5 fee for a Pocket Identification available for certified general, certified residential, state licensed, and provisional licensed appraisers.

Wayne Thorburn, commissioner, has determined that for the first five years there will be no additional cost to state government as a result of enforcing and administering the proposed amendments.

Mr. Thoburn also has determined that of each year of the first five years the amendments are in effect, the public benefit will be the ability of individuals to apply and/or renew authorizations, licenses, certifications via the internet.

No fiscal implications are involved for local government. There will be no effect on small businesses as a result of enforcing these sections. There will be no local employment impact. The additional cost to persons who are required to comply with the proposed amendments are an increase of $5 for establishing and maintaining appraiser trainee renewal and applications, and provisional licensed appraiser applications, an increase of $10 for establishing and maintaining online renewals for state licensed appraisers, and certified general, certified residential, state licensed, and provisional licensed applications. There will be an increase of $5 for a general certified residential certified, state licensed, and provisional licensed appraisers requesting a Pocket Identification.

Comments may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act (Texas Occupations Code, Chapter 1103), Subchapter D. Board Powers and Duties, which provides the board the authority to adopt rules. Section 1103.156, Fees, §1103.151, Rules Relating to Certification and Licenses; Subchapter E. Certificate and License Requirements, §1103.211 Certificate or License Renewal; Continuing Education and §1103.208, Provisional License for Certain Appraiser Trainee; and Subchapter H. Appraiser Trainees, §1103.353. Application for Appraiser Trainees may be affected by these proposed amendments.

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

§153.5. Fees.

(a) The board shall charge and the commissioner shall collect the following fees:

(1) - (12) (No change.)

(13) a fee to request a certificate or license be placed on inactive status of $50; [and]

(14) a fee to request a return to active status of $50; [.]

(15) an on-line subscription renewal fee of $5 for appraiser trainees for establishing and maintaining on-line renewals;

(16) an on-line subscription renewal fee of $10 for state licensed appraiser for establishing and maintaining on-line renewals;

(17) an on-line subscription renewal fee of $10 for certified general, certified residential, and state licensed appraisers for establishing and maintaining on-line applications;

(18) an on-line subscription application fee of $5 for provisional licensed appraisers for establishing and maintaining on-line applications;

(19) an on-line subscription application fee of $5 for appraiser trainees for establishing and maintaining on-line applications; and

(20) a fee of $5 for a Pocket ID for certified general, certified residential, state licensed, and provisional licensed appraisers.

(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.

Filed with the Office of the Secretary of State on September 29, 2004.

TRD-200405607
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 465-3950

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 183. ACUPUNCTURE

22 TAC §183.2

The Texas State Board of Medical Examiners proposes an amendment to §183.2, concerning Acupuncture. The amendment is necessary because the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination has been reformatted and these changes recognize that reformatting.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule as proposed. There will be no effect to individuals required to comply with the section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be compliance with NCCAOM reformatting. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Colleen Klein, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code Annotated, §205.203 which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

§183.2. Definitions.

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

(1) - (18) (No change.)

(19) Full NCCAOM examination--The National Certification Commission for Acupuncture and Oriental Medicine examination, consisting of the following:

(A) if taken before June 1, 2004: the Comprehensive Written Exam (CWE), the Clean Needle Technique Portion (CNTP), the Practical Examination of Point Location Skills (PEPLS), and the Chinese Herbology Exam; or [.]

(B) if taken on or after June 1, 2004: the NCCAOM Foundation of Oriental Medicine Module, Acupuncture Module, Point Location Module, and the Chinese Herbology Module.

(20) - (34) (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 September 13, 2004.

TRD-200405642
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 305-7016

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.26

The Texas State Board of Pharmacy (TSBP) proposes amendment to §291.26 concerning Pharmacies Compounding Sterile Pharmaceuticals. The amendment, if adopted, will correct and clarify the initial training requirements for pharmacists compounding sterile pharmaceuticals.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify the initial training requirements for pharmacists compounding sterile pharmaceuticals.

There is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposed amendment may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., November 1, 2004.

The amendment is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551-566 and 568-569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.051(b) as authorizing the agency to adopt rules concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state, if the board determines the rule is necessary to protect the health and welfare of the citizens of this state.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551-566 and 568-569, Texas Occupations Code.

§291.26. Pharmacies Compounding Sterile Pharmaceuticals.

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

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. The pharmacy shall have a pharmacist-in-charge in compliance with the specific license classification of the pharmacy.

(B) Responsibilities. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning sterile compounding:

(i) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of sterile pharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(ii) determining that all pharmacists involved in compounding sterile pharmaceuticals obtain continuing education appropriate for the type of compounding done by the pharmacist;

(iii) supervising a system to assure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including pharmaceuticals, components used in the compounding of pharmaceuticals, and drug delivery devices;

(iv) assuring that the equipment used in compounding is properly maintained;

(v) developing a system for the disposal and distribution of drugs from the pharmacy;

(vi) developing a system for bulk compounding or batch preparation of drugs;

(vii) developing a system for the compounding, sterility assurance, quality assurance and quality control of sterile pharmaceuticals; and

(viii) if applicable, assuring that the pharmacy has a system to dispose of cytotoxic and/or biohazardous waste in a manner so as not to endanger the public health.

(2) Pharmacists. Special requirements for sterile compounding.

(A) All pharmacists engaged in compounding shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding done by the pharmacist.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(E) A pharmacist shall be accessible at all times to respond to patients' and other health professionals' questions and needs. Such access may be through a telephone which is answered 24 hours a day.

(3) Pharmacy technicians. Pharmacy technicians may compound sterile pharmaceuticals provided the pharmacy technicians:

(A) have completed the education and training specified in paragraph (4) of this subsection; and

(B) are supervised by a pharmacist who has completed the training specified in paragraph (4) of this subsection, conducts in-process and final checks, and affixes his or her initials to the appropriate quality control records.

(4) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) General.

(i) All pharmacy personnel preparing sterile pharmaceuticals shall receive didactic and experiential training and competency evaluation through demonstration, testing (written or practical) as outlined by the pharmacist-in-charge and described in the policy and procedure or training manual. Such training shall include instruction and experience in the following areas:

(I) aseptic technique;

(II) critical area contamination factors;

(III) environmental monitoring;

(IV) facilities;

(V) equipment and supplies;

(VI) sterile pharmaceutical calculations and terminology;

(VII) sterile pharmaceutical compounding documentation;

(VIII) quality assurance procedures;

(IX) aseptic preparation procedures including proper gowning and gloving technique;

(X) handling of cytotoxic and hazardous drugs, if applicable; and

(XI) general conduct in the controlled area.

(ii) The aseptic technique of each person compounding or responsible for the direct supervision of personnel compounding sterile pharmaceuticals shall be observed and evaluated as satisfactory through written or practical tests and process validation and such evaluation documented.

(iii) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile pharmaceuticals and supervise pharmacy technicians compounding sterile pharmaceuticals without process validation provided the pharmacist:

(I) has completed a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE approved provider which provides 20 hours of instruction and experience in the areas listed in this subparagraph; and

(II) completes the on-site process validation within seven days of commencing work at the pharmacy.

(iv) Process validation procedures for assessing the preparation of specific types of sterile pharmaceuticals shall be representative of all types of manipulations, products, risk levels, and batch sizes that personnel preparing that type of pharmaceutical are likely to encounter.

(v) The pharmacist-in-charge shall assure continuing competency of pharmacy personnel through in-service education, training, and process validation to supplement initial training. Personnel competency shall be evaluated:

(I) during orientation and training prior to the regular performance of those tasks;

(II) whenever the quality assurance program yields an unacceptable result;

(III) whenever unacceptable techniques are observed; and

(IV) at least on an annual basis.

(B) Pharmacists.

(i) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians compounding sterile pharmaceuticals shall:

(I) complete through a single course, a minimum of 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training [~~shall be completed at least every seven years and~~] may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a recognized course in an accredited college of pharmacy or a course sponsored by an ACPE approved provider which provides 20 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; and

(II) every two years complete six hours of continuing education related to sterile product compounding offered by a provider approved by ACPE. (These hours may be applied towards the hours required for renewal of a license to practice pharmacy.)

(III) possess knowledge about:

(-a-) aseptic processing;

(-b-) quality control and quality assurance as related to environmental, component, and end-product testing;

(-c-) chemical, pharmaceutical, and clinical properties of drugs;

(-d-) container, equipment, and closure system selection; and

(-e-) sterilization techniques.

(ii) The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Pharmacy technicians. In addition to qualifications for specific license classifications all pharmacy technicians who compound sterile pharmaceuticals shall:

(i) have a high school or equivalent education;

(ii) have initial training obtained either through completion of:

(I) a single course, a minimum of 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may be obtained through:

(-a-) completion of a structured on-the-job didactic and experiential training program at this pharmacy which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph. Such training may not be transferred to another pharmacy unless the pharmacies are under common ownership and control and use a common training program; or

(-b-) completion of a course sponsored by an ACPE approved provider which provides 40 hours of instruction and experience in the areas listed in subparagraph (A) of this paragraph; or

(II) a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(-a-) the compounding occurs only during times the individual is assigned to a pharmacy as a part of the experiential component of the American Society of Health-System Pharmacists training program;

(-b-) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in subparagraph (B) of this paragraph; and

(-c-) the supervising pharmacist conducts in-process and final checks;

(iii) acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph; and

(iv) every two years complete six hours of continuing education related to sterile product compounding. (These hours may be applied towards the hours required for renewal of a pharmacy technician's registration.)

(D) Documentation of Training. A written record of initial and in-service training and the results of written or practical testing and process validation of pharmacy personnel shall be maintained and contain the following information:

(i) name of the person receiving the training or completing the testing or process validation;

(ii) date(s) of the training, testing, or process validation;

(iii) general description of the topics covered in the training or testing or of the process validated;

(iv) name of the person supervising the training, testing, or process validation; and

(v) signature (first initial and last name or full signature) of the person receiving the training or completing the testing or process validation and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training, testing, or process validation of personnel.

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

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

Filed with the Office of the Secretary of State on September 10, 2004.

TRD-200405620
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 305-8028

CHAPTER 297. PHARMACY TECHNICIANS

22 TAC §297.2

The Texas State Board of Pharmacy proposes amendment to §297.2 concerning Definitions. The proposed amendment, if adopted, will clarify the types of training programs a pharmacy technician may be enrolled in while working as a pharmacy technician trainee.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify the types of training programs a pharmacy technician may be enrolled in while working as a pharmacy technician trainee.

There is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposed amendment may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., November 1, 2004.

The amendments are proposed under §§551.002, 554.051, and 554.053 Occupations Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051 as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.053 as authorizing the agency to regulate the training of pharmacy technicians, determine and issue standards for recognition and approval of technician training programs, and maintain a list of Board-approved training programs which meet the standards.

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

§297.2. Definitions.

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

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

(2) Board--The Texas State Board of Pharmacy.

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

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

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

(B) currently enrolled in either a:

(i) pharmacy technician training program:

(I) accredited by the American Society of Health-System Pharmacists or in application-submitted status for accreditation by the American Society of Health-System Pharmacists; or

(II) approved by the Texas Higher Education Coordinating Board; or

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

(5) Registered Pharmacy Technician--A pharmacy technician who is registered with the board.

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

Filed with the Office of the Secretary of State on September 10, 2004.

TRD-200405621

Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 305-8028

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107

The Texas Parks and Wildlife Department proposes an amendment to §65.107, concerning permits to trap, transport, and transplant game animals and game birds (popularly referred to as 'Triple T' permits). The amendment is a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule. As a result of the review and the department's recent rulemaking that consolidated all fee amounts in 31 TAC Chapter 53 (relating to Finance), the proposed amendment would eliminate references to specific fee amounts and comport the remaining language accordingly. The effect of the amendment is nonsubstantive.

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 rules will be an accurate regulation that does not contain extraneous information.

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

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 Chapter 43, Subchapter E.

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

§65.107. Permit Applications and Processing[~~and Fees~~].

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

(c) Permit fees.

(1) The nonrefundable processing fees [~~department shall charge a nonrefundable application processing fee of $150~~] for permits and amendments authorized pursuant to this subchapter are prescribed in Chapter 53, Subchapter A of this title (relating to Fees).

[~~(2) The department shall charge a nonrefundable application processing fee of $25 for amendments to existing permits.~~]

(2) [~~(3)~~] The department will not process any permit application unless the appropriate [~~application~~] fee has been received by the department.

(3) [~~(4)~~] Applications to trap, transport, and transplant nuisance squirrels are exempt from application fees.

(4) [~~(5)~~] Applications for urban white-tailed deer removal permits that specify trap sites consisting solely of property owned by a political subdivision or institution of higher education of this state are exempt from application fees.

(5) [~~(6)~~] Applications to trap, transport, and process surplus white-tailed deer are exempt from application fees.

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 September 13, 2004.

TRD-200405645
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 389-4775

SUBCHAPTER D. DEER MANAGEMENT PERMIT

31 TAC §65.132

The Texas Parks and Wildlife Department proposes an amendment to §65.132, concerning deer management permits. The amendment is a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule. As a result of the review and the department's recent rulemaking that consolidated all fee amounts in 31 TAC Chapter 53 (relating to Finance), the proposed amendment would update the citation of the portion of Chapter 53 where the processing fees for deer management permits are located. The effect of the amendment is nonsubstantive.

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 rules will be an accurate regulation that does not contain extraneous information.

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

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, §43.603, which authorizes the commission to establish the conditions for a permit issued under Chapter 43, Subchapter R.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter R.

§65.132. Permit Application [~~and Fees~~].

(a) Applicants for a DMP shall complete and submit an application on a form supplied by the department. Applications for a DMP shall be accompanied by a deer management plan containing the information stipulated by the application form and the nonrefundable fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees)[~~§53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits)~~]. Incomplete applications will be returned to the applicant and will not be processed until complete. A DMP will be issued following the approval of the applicant's deer management plan by a Wildlife Division technician or biologist assigned to write wildlife management plans.

(b) A permit under this subchapter is valid from September 1 of one year through August 31 of the immediately following year.

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

SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.191, 65.193, 65.194, 65.202

The Texas Parks and Wildlife Department proposes amendments to §§65.190, 65.191, 65.193, 65.194, and 65.202 concerning the Public Lands Proclamation. The amendments are a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule. As a result of the review, the department identified several instances within the subchapter of outdated or inaccurate references, which are addressed by the nonsubstantive changes proposed here, with the exception of the change involving §65.193, which is discussed elsewhere in this preamble.

The amendment to §65.190, concerning Application, assigns a numbered identifier to the following units of public hunting lands: Lake McClellan Recreation Area, Mason Mountain Wildlife Management Area, and Nannie Stringfellow Wildlife Management Area. The numerical designations are used in department publications as a shorthand notation and therefore need to be appended to the rule.

The amendment to §65.191, concerning Definitions, eliminates the definition for the Texas Conservation Passport, which has been discontinued, and replaces the current definition of 'minor' with a definition of 'youth,' which is intended to make the terminology in the rules more consistent with department literature and regulations concerning youth and youth hunting.

The amendment to §65.193, concerning Access Permit Required and Fees, excises all references to the Texas Conservation Passport, which has been discontinued; eliminates a reference to the fee ceiling for a special hunting permit, which is necessary because all fee amounts have been consolidated, through a previous rulemaking, in 31 TAC Chapter 53, concerning Finance; and eliminates the provision allowing for the resubmission of incorrectly completed applications for special permit hunts. Until recently, the department's procedures for processing special permit hunt applications allowed applicants in some but not all cases to be notified of an invalid application, giving the applicant the opportunity to correct and resubmit the application prior to the deadline. The fee for special permit hunt applications is to cover the administrative costs to the department of processing the applications and administering the public hunting program. The fee is nonrefundable because the department incurs a processing cost regardless of whether an application is valid or not. Owing to the steady increase in the popularity of special permit hunts, the number of invalid applications has risen to the point that the department is no longer able to review the applications at a point in time that would allow for notification and resubmission by participants.

The amendment to §65.194, concerning Competitive Hunting Dog Event (Field Trials) and Fees, alters a citation to Chapter 53, concerning Finance, which was rendered obsolete and inaccurate by a recent rulemaking.

The amendment to §65.202, concerning Youth Hunting on Public Lands, replaces the term 'minor' with the term 'youth' and stipulates that a person must be younger than 17 to apply for youth hunts on public lands. The current provision does not identify the precise age cut-off for applications for youth hunts.

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

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 clearer and more user-friendly regulations, and a more streamlined and efficient process for selecting participants for special permit hunts.

There will be no adverse economic cost for small businesses, microbusinesses, or persons required to comply with the rules as proposed, as the proposed amendments do not alter the current cost of compliance with any regulation.

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 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 Vickie Fite, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770; e-mail: vickie.fite@tpwd.state.tx.us.

The amendments are proposed under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; and Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

The proposed amendments affect Parks and Wildlife Code, Chapter 81, Subchapter E.

§65.190. Application.

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

(e) Public hunting lands include, but are not limited to, the following:

(1) - (28) (No change.)

(29) Lake McClellan Recreation Area (Unit 906);

(30) - (31) (No change.)

(32) Mason Mountain WMA (Unit 749);

(33) - (36) (No change.)

(37) Nannie Stringfellow WMA (Unit 716);

(38) - (53) (No change.)

§65.191. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

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

(5) Authorized supervising adult--A parent, legal guardian, or individual at least 18 years of age who assumes liability responsibility for a youth [minor].

(6) - (18) (No change.)

(19) Immediate supervision--Control of a youth [minor] by an authorized supervising adult issuing verbal instructions in a normal voice level.

(20) - (23) (No change.)

[(24) Minor--An individual less than 17 years of age.]

(24) [(25)] Non-consumptive activities--Activities which do not involve the take or attempted take of wildlife resources.

(25) [(26)] On-site registration--The requirement for public users to register at designated places upon entry to and exit from specified public hunting lands, but does not constitute a permit.

(26) [(27)] Permit--Documentation authorizing specified access and public use privileges on public hunting lands.

(27) [(28)] Predatory animals--Coyotes and bobcats.

(28) [(29)] Preference point system--A method of special permit distribution in which the probability of selection is progressively enhanced by prior unsuccessful applications within a given hunt category by individuals or groups.

(29) [(30)] Public hunting area--A portion of public hunting lands designated as being open to the activity of hunting, and may include all or only a portion of a certain unit of public hunting land.

(30) [(31)] Public hunting compartment--A defined portion of a public hunting area to which hunters are assigned and authorized to perform public hunting activity.

(31) [(32)] Public hunting lands--Lands identified in §65.190 of this title (relating to Application) or by order of the executive director on which provisions of this subchapter apply.

(32) [(33)] Regular Permit--A permit issued on a first-come-first-served basis, on-site, at the time of the hunt that allows the taking of designated species of wildlife on the issuing area.

(33) [(34)] Restricted area--All or portions of public hunting lands identified by boundary signs as being closed to public entry or use.

(34) [(35)] Sanctuary--All or a portion of public hunting lands identified by boundary signs as being closed to the hunting of specified wildlife resources.

(35) [(36)] Slug--A metallic object designed for being fired as a single projectile by discharge of a shotgun.

(36) [(37)] Special Permit--A permit, issued pursuant to a selection procedure, which allows the taking of designated species of wildlife.

(37) [(38)] Special package hunt--A public hunt conducted for promotional or fund raising purposes and offering the selected applicant(s) a high quality experience with enhanced provisions for food, lodging, transportation, and guide services.

(38) [(39)] Tagging fee--A fee which may be assessed in addition to the special permit fee for the harvest of alligators for commercial sale or prior to the attempted harvest of desert bighorn sheep or designated exotic mammals.

[(40) Texas Conservation Passport (gold or silver edition)--A permit which provides group access at designated times to designated portions of public hunting lands for non-consumptive use as authorized under the Texas Conservation Passport Program.]

(39) [(41)] Wildlife management area (WMA)--A unit of public hunting lands which is intensively managed for the conservation, enhancement, and public use of wildlife resources and supporting habitats.

(40) [(42)] Wildlife resources--Game animals, game birds, furbearing animals, alligators, marine mammals, frogs, fish, crayfish, other aquatic life, exotic animals, predatory animals, rabbits and hares, and other wild fauna.

(41) [(43)] Wounded exotic mammal--An exotic mammal leaving a blood trail.

(42) Youth--An person less than 17 years of age.

§65.193. Access Permit Required and Fees.

(a) It is an offense for a person without a valid access permit to enter public hunting lands, except:

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

(6) for youth [minors] under the supervision of an authorized supervising adult possessing an APH permit or a LPU permit.

[(b) A Texas Conservation Passport (Gold or Silver) provides group access to designated public hunting lands at times when non-consumptive use is authorized under the Texas Conservation Passport Program. The Texas Conservation Passport is not required to hunt or fish, nor does it authorize the taking of wildlife resources or provide access to public hunting lands at times when an APH permit, LPU permit, regular permit, or special permit is required.]

(b) [(c)] Annual Public Hunting (APH) Permit and Limited Public Use (LPU) Permit.

(1) It is an offense for a person 17 years of age or older to enter public hunting lands or take or attempt to take wildlife resources on public hunting lands at times when an APH permit is required without possessing an APH permit or to fail to display the APH permit, upon request, to a department employee or other official authorized to enforce regulations on public hunting lands.

(2) A person possessing a LPU permit may enter public hunting lands at times that access is allowed under the APH permit, but is not authorized to hunt or fish.

(3) Persons possessing an APH permit or an [, a] LPU permit[, or Texas Conservation Passport (Gold or Silver)] may use public hunting lands to access adjacent public waters, and may fish in adjacent public waters from riverbanks on public hunting lands.

(4) The permits required under paragraphs (1) - (3) of this subsection are not required for:

(A) persons who enter on United States Forest Service lands designated as a public hunting area [(Alabama Creek, Bannister, Caddo, Moore Plantation, and Sam Houston National Forest WMAs)] or any portion of Units 902 and 903 for any purpose other than hunting;

(B) persons who enter on U.S. Army Corps of Engineers lands (Aquilla, Cooper, Dam B, Granger, Pat Mayse, Ray

Roberts, Somerville, and White Oak Creek WMAs) designated as public hunting lands for purposes other than hunting or equestrian use;

(C) persons who enter Caddo Lake State Park and Wildlife Management Area and do not hunt or enter upon the land;

(D) persons who enter and hunt waterfowl within the Bayside Marsh Unit of Matagorda Island State Park and Wildlife Management Area;

(E) persons who enter the Bryan Beach Unit of Peach Point Wildlife Management Area and do not hunt; or

(F) persons who enter Zone C of the Guadalupe River Unit of the Guadalupe Delta Wildlife Management Area and do not hunt or fish.

(5) The permit required by paragraphs (1) - (3) of this subsection is not valid unless the signature of the holder appears on the permit.

(6) A person, by signature of the permit and by payment of a permit fee waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee).

(c) [(d)] Regular Permit--A regular permit is issued on a first come-first served basis at the hunt area on the day of the scheduled hunt with the department reserving the right to limit the number of regular permits to be issued.

(d) [(e)] Special Permit--A special permit is issued to an applicant selected in a drawing.

(e) [(f)] Permits for hunting wildlife resources on public hunting lands shall be issued by the department to applicants by means of a fair method of distribution subject to limitations on the maximum number of permits to be issued.

(f) [(g)] The department may implement a system of issuing special permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(g) [(h)] Application fees.

(1) The department may charge a non-refundable fee, which may be required to accompany and validate an individual's application in a drawing for a special hunting permit.

[(2) The application fee for each person 17 years of age or older listed on an application for a special hunting permit may not exceed $25 per legal species.]

(2) [(3)] The application fee for a special hunting permit is waived for a person under 17 years of age; however, the youth [minor] must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, except as provided in paragraphs (3) [(4)] and (4) [(5)] of this subsection.

(3) [(4)] The application fee for a special permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a youth [minor] in a youth-only drawn hunt category.

(4) [(5)] Persons under 17 years of age may be disqualified from applying for special package hunts or may be assessed the application fee.

(5) [(6)] The application fee for a special permit is waived for on-site applications made under standby procedures at the time of a hunt.

(6) [(7)] Incomplete or incorrectly completed applications will be disqualified [In the event an application for a special permit is determined to be invalid, then:]

[(A) the application card may be returned to the applicant for correction and resubmission, provided the error is detected prior to the time that the application information is processed; or]

[(B) the error will result in disqualification of the applicant(s)].

(h) [(i)] Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(i) [(j)] Only one special or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(j) [(k)] Any applicable special or regular permit fees will be waived for youth [minors] under the supervision of a duly permitted authorized supervising adult.

(k) [(l)] Any applicable regular permit fees for hunting or fishing activities will be waived for persons possessing an APH permit.

(l) [(m)] Certain hunts may be conducted totally or in part by regular permit. It is an offense to fail to comply with established permit requirements specifying whether a regular permit is required of all participants or required only of adult participants who do not possess an APH permit.

(m) [(n)] Any applicable regular permit fees for authorized activities other than hunting or fishing will be waived for persons possessing an APH permit or an [, a] LPU permit[, or Texas Conservation Passport (Gold or Silver)].

(n) [(o)] An access permit applies [Except for the Texas Conservation Passport, all access permits apply] only to the individual to whom the permit is issued, and neither the permit nor the rights granted thereunder are transferable to another person.

(o) [(p)] A person who fails to obey the conditions of a permit issued under this subchapter commits an offense.

§65.194. Competitive Hunting Dog Event (Field Trials) and Fees.

The department may authorize field trials on public hunting lands. All activities conducted pursuant to this section shall be subject to the provisions of this subchapter, except as specifically provided in this section.

(1) (No change.)

(2) An application for a Field Trial Permit shall be submitted at least 90 days in advance of the proposed event to the Wildlife Division regional director in whose region the proposed event would take place. The application shall include, at a minimum:

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

(F) the fee for the field trial permit as assessed according to the number of participating dog handlers and officials as specified by Chapter 53, Subchapter A of this title, (relating to License, Permit, and Boat and Motor Fees) [§53.5 of this title (relating to Public Lands Hunting Permits and Fees].

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

(3) - (8) (No change.)

(9) During any field trial activity, it is an offense for any person attending the event or named on the list required by paragraph (2) [subsection (e)] of this section to:

(A) violate any condition of the field trial permit; or

(B) take or attempt to take any animal or bird.

§65.202. Youth [~~Minors~~] Hunting on Public Lands.

(a) Youth participating in public hunts by special permit must be not less than eight nor more than 16 years of age [~~or older~~] at the time of application.

(b) It is an offense for a youth [~~minor~~] to fail to be under the immediate supervision of a duly permitted and authorized supervising adult when hunting on public hunting lands. For a youth [~~minor~~] who has received hunter education certification, the requirement for immediate supervision is relaxed to the extent that the authorized supervising adult is required only to be present on the public hunting area. The authorized supervising adult is responsible for the actions and liability of the youth [~~minor~~].

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 September 13, 2004.

TRD-200405647
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 389-4775

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §65.603

The Texas Parks and Wildlife Department proposes an amendment to §65.603, concerning scientific breeder's permits. The amendment is a result of the department's review process under the provisions of Government Code, §2001.039, which requires each state agency to perform a review of all regulations not less than every four years and to either readopt, amend, or repeal each rule. As a result of the review and the department's recent rulemaking that consolidated all fee amounts in 31 TAC Chapter 53 (relating to Finance), the proposed amendment would update the citation of the portion of Chapter 53 where the processing fees for deer management permits are located. The effect of the amendment is nonsubstantive.

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 rules will be an accurate regulation that does not contain extraneous information.

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

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, §43.357, which authorizes the commission to regulate the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

The proposed amendment affects Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.603. Application and Permit Issuance.

(a) An applicant for an initial scientific breeder's permit shall submit the following to the department:

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

(5) the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees) [~~§53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits)~~]; and

(6) (No change.)

(b) A scientific breeder's permit may be issued when:

(1) (No change.)

(2) the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees) [~~§53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits)~~].

(c) (No change.)

(d) A scientific breeder's permit may be renewed annually, provided that the applicant:

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

(4) has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees) [~~§53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits)~~].

(e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 13, 2004.

TRD-200405648
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 24, 2004
For further information, please call: (512) 389-4775

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 1. ADMINISTRATION

PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 115. FACILITIES LEASING PROGRAM

SUBCHAPTER A. STATE LEASED PROPERTY

1 TAC §115.13, §115.14

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new sections, submitted by the Texas Building and Procurement Commission have been automatically withdrawn. The new sections as proposed appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2136).

Filed with the Office of the Secretary of State on September 10, 2004.

TRD-200405614

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 254. POISON CONTROL PROGRAM

1 TAC §254.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The new section as proposed appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2158).

Filed with the Office of the Secretary of State on September 10, 2004.

TRD-200405615

CHAPTER 255. FINANCE

1 TAC §255.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amendments to §255.1, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The amended section as proposed appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2159).

Filed with the Office of the Secretary of State on September 10, 2004.

TRD-200405616

1 TAC §255.4

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amendments to §255.4, submitted by the Commission on State Emergency Communications has been automatically withdrawn. The amended section as proposed appeared in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2160).

Filed with the Office of the Secretary of State on September 10, 2004.

TRD-200405617

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 71. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER B. SERVICE OF PROCESS

1 TAC §71.21

The Office of the Secretary of State adopts an amendment to §71.21, concerning service of process on the Secretary of State with one change to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7583).

The purpose of the amendment is to clarify that the term "person" includes a corporation. The amendment also adopts the definition of "person" that is stated in §311.005(2) of the Texas Government Code. The only change to the proposed text is the deletion of the term "corporation" in §71.21(b).

No comments were received concerning the proposed amendment.

The amendment is adopted under the Texas Government Code, §2001.004(1) which provides the Secretary of State with the authority to prescribe and adopt rules.

The amendment does not affect any other statutes or codes.

§71.21. Service of Process.

(a) Service on the Secretary. Service of process on the Secretary of State may be accomplished under many of the existing statutory authorities by delivering to the Secretary of State or to any clerk so designated by the secretary of state, two copies of the process. The name and appropriate address of the person being named as defendant must be provided. It is the responsibility of the attorney or person seeking service of process to determine when to obtain and to secure personal service of process upon the Secretary of State.

(b) Forwarding by the Secretary. One copy of the petition and citation will be forwarded by registered or certified mail, as appropriate under the particular statute under which service is being made, to the person named at the address provided.

(c) Certificate of Service. Upon request, the Secretary of State will issue a certificate showing:

(1) That service was accomplished;

(2) That a copy of the process was forwarded to the named defendant at the specified address; and

(3) The disposition of the mailing shown on the postal return receipt.

(d) Fees. The fees due the Secretary of State for maintaining a record of service of process, forwarding the process, and for issuing a certificate of service shall be as provided in §405.031 of the Texas Government Code.

(e) In this chapter "person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

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 September 10, 2004.

TRD-200405622
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: September 30, 2004
Proposal publication date: August 6, 2004
For further information, please call: (512) 475-0775

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PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURES

1 TAC §155.19, §155.29

The State Office of Administrative Hearings (SOAH) adopts amendments to §155.19, Computation of Time, and §155.29, Pleadings. Section 155.29 is adopted with changes to the proposed text as published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 2991). Section 155.19, Computation of Time, is adopted without changes to the proposed text and will not be republished. The change to the proposed text occurs in §155.29(i), Pleadings, and adds the words "for summary disposition under" after the word "and" and before the phrase "§155.57 (relating to Summary Disposition)." The subsection has also been changed by eliminating the comma between the word "prosecute" and before the word "under." The changes are made to add missing language and to make the language consistent within the subsection.

These sections have been amended to correct the references in them from the previous rule related to dismissal for failure to prosecute, former §155.57(b), which was renumbered as §155.56(a) (relating to Dismissal Proceedings).

SOAH received no comments regarding adoption of the amendments.

The amendments are adopted under Government Code, Chapter 2003, §2003.050, which authorizes SOAH to conduct contested case hearings and requires adoption of hearings procedural rules, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The adopted amendments affect Government Code, Chapters 2001 and 2003.

§155.29. Pleadings.

(a) Content generally. All requests for relief in a contested case not made on the record at a prehearing conference or hearing shall be typewritten or printed on paper 8 1/2 inches wide and 11 inches long, and timely filed at SOAH. Photocopies are acceptable, provided all copies are clear and legible. All pleadings shall contain or be accompanied by the following:

(1) The name of the party seeking relief;

(2) The docket number assigned to the case by SOAH;

(3) The style of the case;

(4) A concise statement of facts relied upon by the pleader;

(5) A clear statement of the type of relief, action, or order desired by the pleader, and identification of the specific grounds supporting the relief requested;

(6) An indication whether a hearing is needed on the relief sought;

(7) A certificate of service, as required by §155.25(b) of this title (related to Service of Documents on Parties);

(8) Any other matter required by statute or rule;

(9) A certificate of conference, if required; and

(10) The signature of the submitting party or the party's authorized representative.

(b) Purpose and effect of motions. To change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party is required to file a motion. Where the provisions of statute or rule do not automatically establish a needed procedure, the party seeking to amend or supplement the procedure should file a written motion. The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order, or any setting by SOAH or the judge.

(c) General requirements for motions. Except as provided in this section or chapter, for motions seeking to intervene or be granted party status, to amend a party's pleadings, for summary disposition, to file a motion to set aside a default or dismissal for failure to prosecute, or to continue a scheduled conference or hearing, all motions shall:

(1) be filed no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing; and,

(2) if seeking an extension of an established deadline,

(A) include a proposed date; and

(B) indicate that the movant has contacted all parties and state whether there is opposition to the proposed date, or describe in detail the movant's attempts to contact the other parties.

(d) Responses to motions generally. Except as provided in this subsection or chapter, responses to motions described in subsection (c) of this section shall be in writing, and filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing. However, responses to written motions late-filed (for good cause shown) on the date of the hearing may be presented orally at hearing.

(e) Motions to intervene. Motions for party status shall be filed no later than twenty days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is served on or otherwise received by other parties.

(f) Motions for Continuance. Motions for continuance shall:

(1) make specific reference to all other motions for continuance previously filed in the case by the movant, and shall set forth the specific grounds upon which the party seeks the continuance;

(2) be filed no later than five days before the date of the hearing, except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at the hearing;

(3) indicate that the movant has contacted all parties and state whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other parties;

(4) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and indicate whether the parties contacted agree on the proposed new date(s); and

(5) be served on the other parties according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile delivery on the same date it is filed with SOAH, or by overnight delivery on the next day, unless the motion demonstrates or the record shows such service is impracticable.

(g) Responses to written motions for continuance. Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the hearing.

(h) Amendment of Pleadings. A party may amend its pleadings by written filing if the amendment does not unfairly surprise other parties; provided that any pleading which substantially affects the scope of the hearing may not be filed later than seven days before the date the hearing actually commences, except by agreement of all parties and consent of the judge.

(i) Motions to reopen the record under §155.15(a)(4) of this title (relating to Powers and Duties of Judges), to set aside a default under §155.55(e) (relating to Failure to Attend Hearing and Default), to set aside a dismissal for failure to prosecute under §155.56(a) (relating to Dismissal Proceedings), and for summary disposition under §155.57 (relating to Summary Disposition), shall be governed by the referenced sections.

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 September 10, 2004.

TRD-200405633

Cathleen Parsley
General Counsel
State Office of Administrative Hearings
Effective date: September 30, 2004
Proposal publication date: March 26, 2004
For further information, please call: (512) 475-4931

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.484

The Public Utility Commission of Texas (commission) adopts amendments to §25.484 (relating to the Electric No-Call List) with changes to the proposed text as published in the March 12, 2004 *Texas Register* (29 TexReg 2512). The proposed amendments: 1) require Retail Electric Providers (REPs) that make non-exempt telemarketing calls to purchase the Electric no-call List; 2) require REPs to provide information, such as call logs or phone records, to the commission to investigate alleged violations of the Electric no-call List; 3) require that such records be maintained by the REP for a period of 24 months; 4) establish presumptions relevant to enforcement of the Electric no-call List; 5) and specify certain types of evidence that are admissible in an action to enforce the Electric no-call List. Project Number 29159 was assigned to this proceeding.

The commission received written comments and reply comments only from the Retail Electric Providers Coalition (REP Coalition), and the Office of Public Utility Commission (OPUC). The commission notes that these commenters cross-referenced their comments with those filed in PUC Project Number 29140 relating to the Texas no-call list (29 TexReg 2514). Thus, some of the comments and commission discussion herein refers to parties who did not file comments in this proceeding.

The commission conducted a public hearing on May 4, 2004, which TXU Energy and Reliant Energy attended.

General Initial Comments

In its general comments, the REP Coalition urged the commission to create a unified Texas no-call list that includes both the consumers listed in the no-call list required by §26.37 of this title and those listed in the Electric no-call list required by §25.484 of this title. The REP Coalition did not provide a specific example, but suggested that a telemarketer unfamiliar with the list required by §26.37 may believe that it needed to comply with only the Electric no-call list.

The commission declines to merge the no-call list required by §26.37 (Texas no-call list) with that required by §25.484 (Electric no-call list). First, the commission notes that the pricing structure for the Electric no-call list is different from the Texas no-call list. Second, each of the lists has different subscription periods. Third, the Electric no-call list is available to business customers, whereas the Texas no-call list is not. Moreover, the commission is not persuaded by the REP Coalition's assertion that a REP acting as a telemarketer would be confused by the existence of a separate Texas no-call list and an Electric no-call list; §25.484(b) clearly states that a REP acting as a telemarketer is also subject to the provisions of §26.37. The commission believes that §25.484, therefore, provides sufficient notice to REPs of the existence and applicability of both no-call lists.

Subsection (a), Purpose

The commission did not receive comments on the proposed amendment to this subsection and, therefore, the commission adopts this section without modification.

Subsection (b), Application

The commission did not propose changes to this subsection and no changes to it were recommended by the commenters. Therefore, the commission adopts this section without modification.

Subsection (c), Definitions

The REP Coalition recommended, for clarity, adding the word "Texas" in front of references to the no-call definitions in this subsection.

The commission disagrees that adding the word "Texas" before the terms "no-call database" and "no-call registrant" serves to clarify or enhance the distinction between the two rules and declines to make that change. The rules relating to the Texas no-call list and the Electric no-call list are in separate chapters of the commission's substantive rules and are, therefore, clearly distinguishable. Further, the definitions contained in subsection (c) of each section clearly distinguish the lists and databases from one another. Accordingly, the commission declines to make the clarifying changes suggested by the REP Coalition.

Subsection (d), Requirement of telemarketers

The REP Coalition asserted that the rule was not enhanced in any regard by adding a requirement for a telemarketer to purchase the Texas no-call list.

The commission believes that requiring telemarketers to purchase the Electric no-call list enhances the rule because of the positive impact it will have on compliance with the no-call prohibitions and the commission's efforts to enforce those prohibitions. The proposed language will also facilitate a telemarketer's ability to demonstrate that a telemarketing call made to a number on the Electric no-call list was an isolated occurrence.

The REP Coalition stated that many REPs contract with third parties who perform telemarketing services on their behalf rather than engaging in telemarketing themselves. Accordingly, the REP Coalition recommended revising subsection (d) to require that a REP whose services are offered by a telemarketer either purchase the no-call list itself or obtain representations from a third-party telemarketer that the telemarketer is a subscriber to the no-call list.

The Business & Commerce Code §44.002(7) defines a telemarketer as one who makes *or causes to be made* a telemarketing call. Therefore, a REP who contracts with a third-party telemarketer to call consumers on its behalf has *caused to be made* a telemarketing call and must, accordingly, comply with the electric no-call prohibitions, including purchasing the Electric no-call list itself. However, the commission believes it reasonable to allow

the REP or other person to discharge their obligations to purchase the current Electric no- call list through contractual obligations with telemarketers. The commission has modified this section and subsection (h)(2) accordingly.

The REP Coalition also suggested replacing the word "telephone" in the proposed additional language of this subsection with the word "telemarketing."

The commission agrees and modifies the proposed language for the second sentence in subsection (d) to change "telephone calls" to "telemarketing calls." Consistent with this modification, the commissions believes that all references in the rule to "telephone call" should be changed to "telemarketing call."

Finally, the REP Coalition asserted that the prohibition on telemarketing calls to telephone numbers that have been published on the Electric no-call list for more than 60 calendar days is overly restrictive. The REP Coalition stated that telephone numbers are frequently reassigned when, for example, customers change premises. Accordingly, the REP Coalition recommended either not adopting subsection (d) or revising it to permit calls to numbers on the Electric no-call list unless there is a match between both the customer name and the telephone number. In its reply comments, MCI supported the REP Coalition's recommendations.

OPUC disagreed with the REPs' assertion that subsection (d) is overly prescriptive and should be amended to allow calls unless there is a match between the customer name and phone number. Instead, OPUC suggested that the database be updated when numbers are actually reassigned. OPUC stated that this suggestion is consistent with MCI's recommendation to add a new subsection (f)(3)(D). OPUC noted, however, that it disagreed with MCI's suggestion to update the database when disconnections occur because that language provides no buffer zone for customers who are disconnected but then quickly reconnected.

As previously stated, the commission has decided to operate the Electric no-call list in accordance with the requirements of the Texas no-call list found in the Business & Commerce Code. Business & Commerce Code §44.101(c) states that the telephone number of the consumer on the Texas no-call list may be deleted from the list on the consumer's written request or if the telephone number of the consumer is changed. This language is permissive and the commission notes that Public Utility Regulatory Act (PURA) §39.1025 contains no such provision. Considering the amount of resources that would be necessary to implement commenters' request, and the lack of a statutory mandate, the commission declines to modify the rule. The commission acknowledges that commenters would prefer more timely updates to the list, but notes that the published list will be updated quarterly and registration expires after five years.

Subsection (e), Exemptions

OPUC opposed MCI's recommendation, submitted in Project Number 29140 (relating to the Texas No-call List), to extend the period for the established business relationship from one year after termination to eighteen months. OPUC noted that the longer it has been since the relationship has ended, the more likely it is that the customer will consider the relationship to be non-existent. Moreover, OPUC stated, a customer that has been unable to utilize the company's services for an extended period, such as eighteen months, because the relationship has terminated should not expect that one of the consequences of that relationship is for calls to possibly resume a year and one-half later. OPUC concluded that the one-year time frame currently in the rule is a reasonable balance between protecting the peace of the consumer's home and encouraging competition.

The commission is in general agreement with OPUC's reply comments. The commission notes that it did not propose any changes to subsection (e)(2)(B)(ii), and is not persuaded by MCI's comments to do so.

Subsection (f), No-call database

In Project 29140 (relating to the Texas No-call List), MCI urged the commission to adopt new language providing for "ongoing updates" to the no-call list. To maintain the accuracy of the no-call list, according to MCI, ongoing updates are necessary because "the growing need for new telephone numbers for wireless phones, computer modems, pagers, and fax machines results in many changed or disconnected numbers reassigned within only a few months."

In their reply comments, the REP Coalition agreed with MCI's suggestion to add a new subsection (f)(3)(D). The REP Coalition stated it preferred this alternative to its initial suggestion on this issue, as it originally stated in its initial comments on proposed subsection (d). The REP Coalition also noted that the comparison of databases should include updates that result from area code assignments.

In the reply comments it submitted in Project 29140, MCI agreed with the language for subsection (d) that the REP Coalition suggested in its initial comments, with a minor revision. The language MCI adopted in those reply comments focused on requiring compliance with the "latest" Texas no-call list provided that both the telephone number and customer name match those in the Texas no-call database.

As noted by MCI, the commission did not propose any changes to subsection (f) and, for reasons including those here and those above relating to subsection (d), declines to adopt a rule that requires ongoing, *i.e.*, continuous, updates to the Electric no-call list. First, PURA §39.1025 requires the commission to establish and provide for the operation of a no-call database, and grants the commission authority to contract with an entity to operate it. Pursuant to the requirements of PURA §39.1025 and the Business & Commerce Code §44.101, the commission contracted with an entity to operate the Texas and Electric no-call databases. Those databases are operated in accordance with the more specific requirements set forth in Chapter 44, Business & Commerce Code. Section §44.101(c) requires the Texas no-call list, and therefore, the Electric no-call list, to be updated and published on January 1, April 1, July 1, and October 1 of each year. Second, the commission believes the suggestion to mandate an "ongoing" list would create confusion among REPs and telemarketers, the public, regulatory agencies, and the courts when called upon to comply with or to enforce the no-call prohibitions. Third, there could be no reasonable assurance for a REP or telemarketer that a list purchased on Monday would still be applicable on Tuesday. Finally, the commenters failed to propose a rule that addressed either the cost associated with, or method of, purchasing a no-call list that is updated continuously, and the commission declines to propose one now without the benefit of public commentary. The commission, therefore, is not persuaded to initiate the commenters' substantive changes the commission believes are already, and adequately, addressed by statute.

The commission makes a clarifying change to proposed subsection (f)(3)(A) to correct a reference from Chapter 43, Business & Commerce Code, to Chapter 44 of that statute.

Subsection (g), Notice

The commission did not propose any changes to this subsection and no changes to it were recommended by the commenters. Therefore, the commission adopts this section without modification.

Subsection (h), Violations

In Project Number 29140 (relating to the Texas no-call List), most commenters combined their comments for subsection (h) with those for subsection (i). The subject matter of these two subsections is conveniently addressed in combined comments and responses. Therefore, the commission's response to comments relevant to both subsections (h) and (i) are addressed in the commission's responses to comments about subsection (i).

Similarly, for reasons discussed in its responses to subsection (i), the commission believes that the second sentence in proposed subsection (h)(1) is not necessary since it is duplicative of the requirements in subsection (i), as amended. Therefore, the commission modifies the proposed rule accordingly.

Subsection (i), Record retention; Provision of records, Presumptions

Record retention, subsection (i)(1):

The REP Coalition suggested modifying the proposed rule to apply only to *completed* telemarketing calls. Similarly, the REP Coalition contended that a REP or telemarketer should not be obligated to maintain records of multiple attempts of telemarketing calls to the same telephone number.

The commission declines to modify the rule's record-retention requirement such that it applies only to *completed* telemarketing calls. PURA §39.1025 broadly prohibits a call to an electricity customer who has given notice of their objection to receiving telephone solicitations - without regard to whether the telephone solicitation is completed. The commission, however, notes that the Electric no-call list is operated in accord with the requirements specified in Business & Commerce Code Chapter 44. Pursuant to Business & Commerce Code §44.102(a), a telemarketer may not make a telemarketing call to a telephone number that has been published on the Texas no-call list for more than 60 days. Section 44.003(a) defines a "telemarketing call" as an unsolicited telephone call made for certain purposes. Next, §44.002(9) states that a "telephone call" is a call which is *made to or received at* a telephone number. The commission interprets the phrase "made to" as referring to an incomplete telephone or attempted telephone call. The commission therefore concludes that the statute applies to attempted calls as well as completed calls. Answering an unwanted telephone call is only part of the nuisance; consumers must be free of the annoyance in their own homes of their telephone being caused to ring by unwanted telemarketers. Also, federal regulations recognize that it is an abusive telemarketing act or practice for a telemarketer to cause any telephone to ring and require a telemarketer to maintain certain records establishing it only abandons attempted calls under limited and specific conditions. See, e.g., 16 C.F.R. §310.4(b)(1)(i) and (b)(4). Therefore, records must be maintained of every telemarketing call whether or not that call was completed.

Provision of records (i.e., 21-days), subsection (i)(2)

The REP Coalition suggested modifying subsection (i)(2) to address its concern that the phrase requiring the company to provide "all information" relating to the commission's investigation of complaints regarding the no-call list is not possible. The REP Coalition also argued that the proposed rule is too vague to give REPs sufficient notice of the specific telemarketing records that must be maintained and provided to the commission.

OPUC observed that it is not necessary for the commission to clarify the rule such that the rule defines the scope of the commission's investigation or information request because, since the information sought by the commission would be determined on a case-by-case basis, the commission would detail the parameters of the request for information in the request itself. OPUC also noted, in its opinion, that the phrase "phone records" as used in this subsection would be limited to those types of records related to the telemarketer's activities as a telemarketer or to the complaint.

The commission addresses these comments below, in its response to comments relating to subsections (i)(3) and (4).

The REP Coalition suggested that the commission specify in subsection (i) that a request for information made pursuant to subsection (i)(2) must be limited to calls made to a complainant's number on a specific date or a period not to exceed ten days. The REP Coalition stated that a specified date range would permit retail electric providers to better implement cost-efficient processes to promptly respond to commission investigations.

OPUC noted that requiring consumers to provide the exact date or dates of unwanted telemarketing calls may be an unreasonable expectation. Some customers, OPUC stated, may not make a complaint until after several unwanted calls have occurred and, therefore, be unable to provide a specific date or date range as proposes by those commenters.

The commission agrees with OPUC and declines to require that a request for information it submits to a telemarketer be limited to a 10-day time period. The consumer may not be able to provide in such a narrow time period its complaint and, consequently, the commission may not be able to limit its investigative efforts to such a narrow time period. Alternatively, the commission's investigation may be initiated *sua sponte* and, therefore, be unable realistically to limit its investigation to only a 10-day time period. Further, a broader search, whether in response to a complaint or the commission's *sua sponte* investigation, may reveal additional violations. Accordingly, the commission's efforts to protect the public should not be constrained or thwarted in a manner that could obscure a telemarketer's pattern or practice of violating the no-call prohibitions.

The REP Coalition stated that the requirement in subsection (i)(2) to respond to an informal complaint within 21 days is duplicative of §26.30(b)(1)(B) of this title, and, therefore, that it is unclear what benefit is gained by reiterating this deadline.

Subsection (i) is not duplicative of §25.485(d)(1)(C). Those provisions apply to informal complaints and only require the company to "advise" the commission, which, notably, in the context of the cited rules would be a response to the commission's Customer Protection Division (CPD) and not to the commission's Legal & Enforcement Division (LED). The requirement in the proposed rule clarifies that the company must actually provide certain records to the commission in the context of an investigation, including, specifically, an investigation conducted by the LED.

The REP Coalition suggested that subsection (i)(2) should be modified to add the word "alleged" before the phrase "violations of the no-call list," which also appears in subsection (h)(1), because the phrase is, otherwise, unfairly presumptive.

The commission clarifies subsection (i)(2) to address the REP Coalition's concern that the rule appeared presumptive. The commission made other changes to ensure that subsection (i)(2) is consistent with the changes the commission made to proposed subsection (h)(1). As noted above, the commission modified subsection (h)(1) because it appeared redundant of subsection (i)(2).

Presumptions, subsections (i)(3) and (4):

The REP Coalition suggested that subsections (i)(3) and (4) should be clarified to describe what a telemarketer was required to respond to pursuant to those subsections.

In response to these comments, the commission has modified the phrase "thorough response" in subsections (i)(2), (3), and (4) to require telemarketers to provide "all telemarketing information in their possession and upon which they rely to demonstrate compliance." The commission intends by this provision to prevent telemarketers from providing skeletal, token responses that frustrate the commission's investigative and enforcement efforts. However, it is impossible and unnecessary for the rule to anticipate every possible combination of telemarketing information that could be required for every possible case. The phrase "phone records" as used in this subsection would be limited to those types of records related to the telemarketer's activities as a telemarketer or to the complaint, and specifically, but not limited to, those identified in subsection (i)(1) of the rule.

Finally, the commission clarifies that by use of the phrase "telemarketing information," the commission requires a telemarketer to produce all information in its possession regardless of the source related to all defenses it might raise in response to a complaint alleging a violation of this section.

The REP Coalition argued that no provision of the no-call statute permits designating the failure to provide requested records as a no-call violation. The REP Coalition stated it is both unreasonable and misleading to pursue a no-call violation for an administrative failure such as missing a deadline.

OPUC argued that the commission has authority to designate that a failure to provide requested records results in a no-call violation. OPUC concluded that the proposed rules are a reasonable expression of the commission's authority to make rules, receive and investigate complaints, and enforce the no-call statutes.

The commission disagrees that it lacks authority to designate that a failure to provide requested records results in a no-call violation. The commission agrees with OPUC that the proposed rule is a reasonable expression of the commission's authority to make rules, receive and investigate complaints, and enforce the no-call statutes pursuant to its specific and implied authority granted to the commission by PURA §39.1025 and the Business & Commerce Code §44.102(b) and §44.103(a).

The REP Coalition recommended deleting (i)(3) and (i)(4) in their entirety. Although the REP Coalition asserted that subsection (i)(3) should not be adopted, it proposed, alternatively, deleting the phrase "thorough response" as overly broad and subjective. OPUC disagreed with the REP Coalition that the phrase "thorough response" is too vague. OPUC stated that the phrase is clearly intended to prevent telemarketers from providing skeletal, token responses that frustrate the commission's investigative and enforcement efforts. In addition, OPUC asserted, the rule does not need to anticipate every possible combination of information that could be required for every possible case.

The commission disagrees that the phrases "phone records," "thorough response," and "all information relating to the commission's investigation" are fatally vague. While the phrase "thorough response" has been modified, the commission intends to prevent REPs and telemarketers from providing skeletal, token responses that frustrate the commission's investigative and enforcement efforts. However, it is impossible and unnecessary for the rule to anticipate every possible combination of information that could be required for every possible case. Since the information sought by the commission will be determined on a case-by-case basis, the commission will detail the parameters of the request for information made pursuant to this rule in the request itself. Finally, the phrase "phone records" as used in this subsection would be limited to those types of records related to the telemarketer's activities as a telemarketer or to the complaint.

The REP Coalition asserted it is both unreasonable and misleading to pursue a no-call violation against a company for an administrative failure such as missing a deadline. Failure to provide records in a limited timeframe, the REP Coalition continued, cannot be fairly characterized as a substantive violation of the rule.

The commission clarifies that a company's failure to respond within the time specified by this subsection establishes a violation of subsection (h)(1) (this section's "21-day rule") and also establishes a no-call violation.

The intent of this portion of the proposed rule includes establishing the occurrence of a no- call violation in the event a telemarketer fails or refuses to provide it response within 21 days of the commission's request. In the commission's experience, parties that have evidence supporting their compliance can, and generally do, provide such information to the commission within 21 days. However, the commission has previously determined that at some point it must be presumed that a company that fails or refuses to provide evidence supporting its compliance must not have such evidence. In its comments during the public hearing in PUC Project Number 28324, *PUC Rulemaking Proceeding to Amend PUC Substantive Rules 26.32 and 26.130*, AT&T acknowledged that it likely did not have such information if it had failed to provide it within 30 days. Moreover, since this evidence is required to be maintained by the company in the regular course of business it can be provided to the commission without imposing an unreasonable burden on the telemarketer.

Because the only two relevant issues in an enforcement hearing are: 1) the occurrence of the violation, and 2) the appropriate amount of monetary penalties, the proposed rule effectively establishes the occurrence of the violation, *unless* the telemarketer presents, during the hearing, evidence that it did, in fact, provide evidence supporting compliance with the no-call rule within the 21-day deadline. If the telemarketer did provide proof of compliance within the deadline, then the issue turns to the validity of the evidence provided. To establish the occurrence of the violation, the commission frequently must rely upon evidence provided by the company during the commission's investigation into alleged events. A telemarketer can hide behind a cloak of secrecy and, by failing to provide the documentation, thwart meaningful enforcement actions and obscure the extent of its culpable actions. The intent of this subsection, therefore, is to discourage telemarketers from withholding relevant information from the commission.

The REP Coalition asserted that subsection (i)(4) conflicts with subsection (h)(2)(B)(i). According to the REP Coalition's argument, subsection (i)(4) imposes a penalty for not producing the

information described by subsection (h)(2)(B)(i), the production of which the REP Coalition views as optional.

The commission declines to modify subsection (i)(4) but clarifies that there is not an internal conflict between subsection (i) and subsection (h)(2)(B)(i). Subsection (h)(2)(B) establishes that the burden to prove that a telemarketing call was made in error and was an isolated occurrence rests upon the telemarketer who made the call. To meet its burden, and preserve the availability of an affirmative defense to a potential violation of the no-call rules, the telemarketer must produce evidence of the information listed in subsection (h)(2)(B)(i)-(iv). A telemarketer's failure to do so waives the affirmative defense, which effectively establishes a violation of the no-call rules. Subsection (i)(4) establishes a time period within which the telemarketer must provide the records specified by paragraph (2), and subsection (h)(2)(B), if applicable.

Subsection (j), Evidence

The REP Coalition suggested that the proposed rule may be constitutionally deficient in that it does not appear to contemplate making the customer available for cross-examination. The REP Coalition suggested a consumer affidavit might be admissible if the commission: 1) gave notice that the consumer would not be present at the hearing; 2) established a reasonable basis for the consumer's absence at the hearing; and 3) at the telemarketer's request, made the consumer available for "examination" or deposition prior to the hearing. According to the REP Coalition's argument, these criteria are necessary because the consumer is effectively the commission's witness. Further, the REP Coalition argued the reasonableness of the time(s) and place(s) of "examination" must be assured so that the telemarketer is not forced to bear unreasonable costs in accessing the consumer.

OPUC suggested including a reference to P.U.C. Procedural Rule 22.221 (relating to Rules of Evidence in Contested Cases) in subsection (j). In its reply comments, OPUC expressed concern that requiring personal appearances by consumers in an administrative enforcement proceeding may create a disincentive to complain legitimately of no-call violations. In addition, OPUC noted, the level of participation required by a complaining consumer who brings his or her own civil action pursuant to Business & Commerce Code §44.102(f) should not be the same as the level of participation required in an administrative enforcement proceeding.

As previously determined in a recent slamming rulemaking under Project Number 28324, adopted by the commission on April 29, 2004, *Texas Register* (29 TexReg 4852), the commission disagrees that proposed subsection (j) predetermines the admissibility of a consumer affidavit in a proceeding to enforce the commission's no-call rules. Because a consumer affidavit is not presumptively admitted into evidence against a telemarketer accused of a no-call violation, the proposed rule does not infringe upon such a telemarketer's due process rights.

Consumer affidavits are not presumptively admitted into evidence against a telemarketer in a proceeding to enforce the commission's no-call rules. Subsection (j) specifically identifies consumer affidavits as information the commission believes *may*, and in many situations should, be admissible pursuant to the more expansive approach to evidentiary issues allowed by Administrative Procedure Act (APA) §2001.081. Pursuant to this proposed rule, a consumer affidavit, to be admitted into evidence in the absence at hearing of the consumer who made the affidavit, must meet the requirements set out in APA §2001.081. Accordingly, the proponent seeking to admit the consumer affidavit must demonstrate that it is: (1) necessary to ascertain facts not reasonably susceptible to proof under the rules of evidence as applied in a nonjury civil case in a district court of Texas; (2) not precluded by statute; and (3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Any party opposing admission of the consumer affidavit may argue that one or more of these elements have not been satisfied by the proponent and, if successful, prevent admission of the affidavit.

However, as explained below in more detail, the commission believes that a consumer affidavit is the type of evidence that is appropriate for admission pursuant to APA §2001.081 in a proceeding to enforce the commission's no-call rules.

First, the information described by proposed subsection (j) is necessary to ascertain facts that are not likely to be reasonably susceptible to proof because it is generally too costly for consumers and the commission to require attendance by the consumers at an enforcement proceeding related to alleged no-call violations. The commission interprets the phrase "not reasonably susceptible to proof" as a reference to the ease with which the facts may be proved under the rules of evidence. How long it would take and how much it would cost to prove an issue are, therefore, relevant factors in determining whether some fact at issue is "reasonably susceptible of proof." In most no-call cases, the harm suffered by the consumer will be far outweighed by the cost of attending a hearing in Austin, Texas. Attendance at a hearing in Austin would, in most instances, require the consumer to incur un-reimbursed expenses, including, but not necessarily limited to, lodging, meals, and travel. In addition, attending a hearing in Austin would require consumers with daytime jobs to take time off from work. The commission does not have budgeted funds to pay witnesses' expenses. Under these circumstances, the commission believes a consumer will rarely choose to come to Austin to testify in a no-call case.

Next, the commission is not aware of any statute that specifically precludes admitting consumer affidavits in no-call cases. Moreover, the commission finds that the due process rights of respondents to complaints are adequately protected because they have an opportunity to engage in discovery on the affiants and compel their attendance at hearing. Finally, Staff experts commonly rely on a variety of information to determine whether a no-call violation occurred, including the consumer's complaint, whether sworn to in the form of affidavit or not, and the telemarketer's response to that complaint. Therefore, the commission believes that a consumer affidavit is the type of evidence that should be admissible as contemplated by APA §2001.081.

Some commenters also suggested that consumer affidavits were not admissible pursuant to APA §2001.081 because the affiant could easily be deposed by the commission or ordered to appear at the hearing by telephone. The commission disagrees. No-call enforcement proceedings share many characteristics of mass litigation (the complainant usually suffers relatively minor, albeit unwanted, "injuries," but the complainant may be one of hundreds or thousands of similarly situated consumers). The commission does not have the budget or manpower necessary to attend and conduct depositions of so many complainants, many of whom may live great distances from Austin. Also, telephonic participation may be reasonable for one or two witnesses, but since no-call proceedings can potentially involve hundreds of consumers, telephonic participation potentially presents substantial and unreasonable logistical difficulties,

for the consumers, the commission, the telemarketer and the Administrative Law Judge (ALJ) relating to scheduling an order of presentation for each consumer, their appropriate contact telephone number and the specific time each consumer will appear. Therefore, the costs to the consumer and to the commission of pursuing such alternatives to attendance at a no-call enforcement proceeding will generally far outweigh any benefit they may provide. Accordingly, the commission disagrees that either of these methods of consumer attendance will be reasonable in all enforcement proceedings related to alleged no-call violations.

Moreover, telemarketers' due process rights are not infringed by proposed subsection (j). First, telemarketers may object and assert that one or more of the elements of APA §2001.081 have not been demonstrated by commission staff. Second, nothing in the proposed rule eliminates a telemarketer's ability to depose a consumer who has submitted an affidavit or, consistent with the Texas Rules of Civil Procedure, to seek compulsory attendance at the proceeding by that consumer. Finally, a telemarketer may conduct discovery, depose, and cross- examine the commission's testifying expert about the basis for that expert's opinion, including the consumer affidavits if such were relied upon by the expert.

The commission also notes that the content of consumer affidavits is admissible through the testimony of the commission's staff expert. Pursuant to Texas Rules of Evidence 703 and 705, the staff expert may rely on consumer affidavits as the basis for his or her testimony and may disclose on direct, or must disclose on cross, the facts or data, including those affidavits, that form the basis of the commission staff's opinion. Therefore, even if the consumer affidavits are not admitted pursuant to APA §2001.081, those affidavits are properly considered as the subject of the staff expert's testimony pursuant to Texas Rules of Evidence 703 and 705, and the commission's Procedural Rule 22.221 as noted by OPUC.

Based upon the comments, the commission modifies proposed subsection (j) to eliminate the redundant reference relating to the applicability of the Texas Rules of Evidence to no-call enforcement proceedings. The commission adopts the proposed subsection with amendments appropriate to the elimination of that reference.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting these amendments, the commission makes other minor modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.1025 which provides the commission with the authority to operate the no-call database and prohibits the telephone solicitation of an electricity customer who has previously advised the commission that he/she does not want to receive such solicitations. In addition, these amendments are proposed under the Texas Business & Commerce Code Annotated §§44.101-.104 (Renumbered from §§43.101-.104 by Acts 2003, 78th Leg., ch. 1275, §2(3), eff. Sept 1, 2003) (Vernon 2002 & Supp. 2004) which grants the commission the authority to adopt rules to administer and enforce the Electric no-call list.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.1025; and Texas Business & Commerce Code Annotated §§44.101 - 44.104.

§25.484. Electric No-Call List.

(a) Purpose. This section implements the Public Utility Regulatory Act (PURA) §39.1025, relating to Limitations on Telephone Solicitation, and the Texas Business & Commerce Code Annotated (Bus. & Comm. Code) §44.103 relating to rules, customer information, and isolated violations of the Texas no-call list.

(b) Application. This section applies to retail electric providers (REPs) as defined in §25.5 of this title (relating to Definitions). A REP acting as a telemarketer, as defined by §26.37 of this title (relating to Texas No-Call List), is also subject to the provisions of §26.37 of this title.

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

(1) Consumer good or service--For purposes of this section, consumer good or service has the same meaning as Business & Commerce Code §44.002(3) relating to Definitions.

(2) Electric no-call database--Database administered by the commission or its designee that contains the names, addresses, telephone numbers and dates of registration for all Electric no-call registrants. Lists or other information generated from the electric no-call database shall be deemed to be a part of the database for purposes of enforcing this section.

(3) Electric no-call list--List that is published and distributed as required by subsection (f)(2) of this section.

(4) Electric no-call registrant--A telephone customer who has registered, by application and payment of accompanying fee, for the Electric no-call list.

(5) Established business relationship--A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.

(6) Telemarketing call--An unsolicited telephone call made to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.

(7) Telephone call--A call or other transmission that is made to or received at a telephone number within an exchange in the state of Texas, including but not limited to:

(A) a call made by an automatic dial announcing device (ADAD); or

(B) a transmission to a facsimile recording device.

(8) Telemarketer--A person who makes or causes to be made a telemarketing call that is made to a telephone number in an exchange in the state of Texas.

(d) Requirement of REPs.

(1) A REP shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the electric no-call list.

(2) A REP shall purchase each published version of the electric no-call list unless:

(A) the entirety of the REP's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section;

(B) a REP has a written contractual agreement with another telemarketer to make telemarketing calls on behalf of the REP and that telemarketer is contractually obligated to comply with all requirements of this section. In the absence of a written contract that requires the telemarketer to comply with all requirements of this section, the REP and the telemarketer making telemarketing calls on behalf of the REP are both liable for violations of this section.

(e) Exemptions. This section shall not apply to a telemarketing call made:

(1) By an electric no-call registrant that is the result of a solicitation by a REP or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;

(2) In connection with:

(A) An established business relationship; or

(B) A business relationship that has been terminated, if the call is made before the later of:

(i) the date of publication of the first electric no-call list on which the electric no-call registrant's telephone number appears; or

(ii) one year after the date of termination; or

(3) To collect a debt.

(f) Electric no-call database.

(1) Administrator. The commission or its designee shall establish and provide for the operation of the electric no-call database.

(2) Distribution of database.

(A) Timing. Beginning on April 1, 2002, the administrator of the electric no-call database will update and publish the entire electric no-call list on January 1, April 1, July 1, and October 1 of each year;

(B) Fees. The electric no-call list shall be made available to subscribing REPs for a set fee not to exceed $75 per list per quarter;

(C) Format. The commission or its designee will make the electric no-call list available to subscribing REPs by:

(i) electronic internet access in a downloadable format;

(ii) Compact Disk Read Only Memory (CD-ROM) format;

(iii) paper copy, if requested by the REP; and

(iv) any other format agreed upon by the current administrator of the no-call database and the subscribing REP.

(3) Intended use of the electric no-call database and electric no-call list.

(A) The electric no-call database shall be used only for the intended purposes of creating an electric no-call list and promoting and furthering statutory mandates in accordance with PURA §39.1025 and the Business & Commerce Code, Chapter 44 relating to Telemarketing. Neither the electric no-call database nor a published electric no-call list shall be transferred, exchanged or resold to a non-subscribing entity, group, or individual, regardless of whether compensation is exchanged.

(B) The no-call database is not open to public inspection or disclosure.

(C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.

(4) Penalties for misuse of information. Improper use of the electric no-call database or a published electric no-call list by the administrator, REPs, or any other person, regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).

(g) Notice. A REP shall provide notice of the electric no-call list to its customers as specified by this subsection. In addition to the required notice, the REP may engage in other forms of customer notification.

(1) Content of notice. A REP shall provide notice in compliance with §25.473 of this title (relating to Non-English Language Requirements) that, at a minimum, clearly explains the following:

(A) Beginning January 1, 2002, customers may add their name, address and telephone number to a state-sponsored electric no-call list that is intended to limit the number of telemarketing calls received relating to the customer's choice of REPs;

(B) When a customer who registers for inclusion on the electric no-call list can expect to stop receiving telemarketing calls on behalf of a REP;

(C) A customer must pay a fee to register for the electric no-call list;

(D) Registration of a telephone number on the electric no-call list expires on the fifth anniversary of the date the number is first published on the list;

(E) Registration of a telephone number on the electric no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;

(F) The customer registration fee, which cannot exceed five dollars per term, must be paid by credit card when registering online or by telephone. When registering by mail, the fee must be paid by credit card, check or money order;

(G) The toll-free telephone number, website address, and mailing address for registration; and

(H) A customer that registers for inclusion on the electric no-call list may continue to receive calls from telemarketers other than REPs, and a statement that the customer may instead or may also register for the Texas no-call list that is intended to limit telemarketing calls regarding consumer goods and services in general, including electric service.

(2) Publication of notice. A REP shall include notice in its Terms of Service document or Your Rights as a Customer disclosure. The notice shall be easily legible, prominently displayed and comply with the requirements listed in paragraph (1) of this subsection.

(3) Records of customer notification. A REP shall provide a copy of records maintained under the requirements of this subsection as specified by §25.491 of this title (relating to Record Retention and Reporting Requirements).

(h) Violations.

(1) Separate occurrence. Each telemarketing call to a telephone number on the electric no-call list shall be deemed a separate occurrence.

(2) Isolated occurrence. A telemarketing call made to a number on the electric no-call list is not a violation of this section if the telemarketer complies with section (d)(2) and the telemarketing call is determined by the commission to be an isolated occurrence.

(A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one separate occurrence, but it does not involve a pattern or practice.

(B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the REP who made (or caused to be made) the call. In order for a REP to assert as an affirmative defense that a potential violation of this section was an isolated occurrence, the REP must provide evidence of the following:

(i) The REP has purchased the most recently published update to the electric no-call list, unless the entirety of the REP's business is comprised of making or causing to be made telemarketing calls that are exempt pursuant to subsection (e) of this section and the REP can provide sufficient proof of such;

(ii) The REP has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;

(iii) The REP has trained its personnel in the established procedures; and

(iv) The telemarketing call that violated this section was made contrary to the policies and procedures established by the REP.

(i) Record retention; Provision of records; Presumptions.

(1) A REP shall maintain a record of all telephone numbers it has attempted to contact for telemarketing purposes, a record of all telephone numbers it has contacted for telemarketing purposes, and the date of each, for a period of not less than 24 months from the date the telemarketing call was attempted or completed.

(2) Upon request from the commission or commission staff, a REP shall provide, within 21 calendar days, all information in its possession and upon which it relies to demonstrate compliance with this section, relating to the commission's investigation of potential violations of the no-call list including, but not limited to, the call logs or phone records described in subsection (i)(1).

(3) Failure by a REP to respond, or to produce all information in its possession and upon which it relies to demonstrate compliance with this section, within the time specified in paragraph (2) of this subsection establishes a violation of this section.

(4) In response to a request from the commission pursuant to paragraph (2) of this subsection, a REP's failure to produce all telemarketing information in its possession and upon which it relies to demonstrate compliance with this section and, if applicable, to establish an affirmative defense pursuant to subsection (h)(2)(B) of this section, within the time specified in paragraph (2) of this subsection establishes a violation of this section.

(j) Evidence. Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from the recipient of a telemarketing call is admissible to enforce the provisions of this section.

(k) Enforcement and penalties. The commission has jurisdiction to investigate REP violations of this section, as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).

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

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

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§70.10, 70.50, 70.70, and 70.73, and the repeal of existing rule §70.91 regarding the industrialized housing and buildings (IHB) program as published in the July 9, 2004, issue of the *Texas Register* (29 TexReg 6488), without changes, and will not be republished.

The proposed amendments to §70.10 correct a discrepancy in the definition of alteration in the rules with the definition in the procedures approved by the Texas Industrialized Building Code Council. The procedures indicate that only ordinary repairs are exempt from the review and inspection requirements for alterations. The definition in the rules has been revised.

Proposed amendments in §§70.50, 70.70, and 70.73 clarify document retention periods and inspection requirements. These amendments are necessary to ensure that records are available to the department to aid in resolving disputes and consumer complaints.

The repeal removes §70.91 because it is no longer necessary since the Department has issued Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received.

16 TAC §§70.10, 70.50, 70.70, 70.73

The amendments are adopted under Texas Occupations Code, Chapter 51 and Chapter 1202 which authorize the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 1202. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on September 13, 2004.

TRD-200405653
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 3, 2004
Proposal publication date: July 9, 2004
For further information, please call: (512) 463-7348

16 TAC §70.91

The repeal is adopted under Texas Occupations Code, Chapter 51 and Chapter 1202 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapter 51 and 1202. No other statutes, articles, or codes are affected by the repeal.

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

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TRD-200405654
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

The Texas Department of Licensing and Regulation ("Department") adopts amendments to 16 Texas Administrative Code ("TAC") §§76.10, 76.201, 76.204 - 76.206, 76.600, 76.800, 76.900, and 76.1000 and the repeal of §76.707, regarding the water well drillers and water well pump installers program without changes to the proposal as published in the June 4, 2004, issue of the *Texas Register* (29 TexReg 5477) and will not be republished.

The amendments are necessary to harmonize terminology in a definition with that used in new examinations for water well drillers and pump installers, correct typographical errors, ensure certain rule provisions meet the contingencies of the new examination process, and achieve conformity between water well drillers and pump installers regarding license designations and fees. The repeal removes §76.707 which is redundant since another provision in the rules, §76.900, addresses the same subject matter.

The Department drafted and distributed the proposal to persons internal and external to the agency. Two comments were received regarding the proposal. The two comments did not ask for specific changes to the proposal, but rather sought clarification of Department statutory and rule interpretation. No changes were made to the proposal in response to the comments.

16 TAC §§76.10, 76.201, 76.204 - 76.206, 76.600, 76.800, 76.900, 76.1000

The amendments are adopted under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the adoption.

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

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TRD-200405612
William H. Kuntz, Jr.
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For further information, please call: (512) 463-7348

16 TAC §76.707

The repeal is adopted under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1901, and 1902. No other statutes, articles, or codes are affected by the adopted repeal.

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

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William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 30. ADMINISTRATION
SUBCHAPTER AA. COMMISSIONER'S RULES: GENERAL PROVISIONS

19 TAC §30.1001

The Texas Education Agency (TEA) adopts new §30.1001, concerning petitions for adoption of changes to commissioner rules, without changes to the proposed text as published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6869) and will not be republished. The adopted new section establishes in rule the procedure for submitting and processing petitions to adopt changes to commissioner rules.

Texas Government Code, §2001.021, requires that a state agency shall by rule prescribe the form for use by an interested person to petition for the adoption of a rule and the procedures for the submission, consideration, and disposition of a petition. Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures to petition for the adoption of changes to commissioner rules.

The adopted new 19 TAC §30.1001 specifies that any person interested in petitioning for the adoption, amendment, or repeal of a commissioner rule must do so by filing the petition in a format that supplies specific information related to the requested rule action. The new rule also explains the action to be taken by the commissioner after receipt of the petition and addresses the 60-day time limit for a decision on a petition.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition for use by an interested person to request the adoption of a rule and the procedure for the submission, consideration, and disposition of a petition.

The new section implements the Texas Government Code, §2001.021.

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 September 3, 2004.

TRD-200405559

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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Proposal publication date: July 16, 2004
For further information, please call: (512) 475-1497

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1034

The Texas Education Agency (TEA) adopts an amendment to §61.1034, concerning school facilities, without changes to the proposed text as published in the June 18, 2004, issue of the *Texas Register* (29 TexReg 5886) and will not be republished. The section establishes provisions related to the allotment for new instructional facilities as authorized under Texas Education Code (TEC), §42.158. This adopted amendment replaced an earlier version that was filed as proposed in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2840), which was withdrawn.

The adopted amendment modifies existing provisions in order to accommodate an electronic, web-based application for funding. The changes include restoration of language regarding the requirements to send documents by certified mail that were inadvertently omitted in the originally proposed amendment. Additional changes also clarify the deadline for submitting on-line applications and the supporting documentation.

Senate Bill 4, 76th Texas Legislature, 1999, created the new instructional facility allotment (NIFA) within the first tier of the Foundation School Program pursuant to TEC, Chapter 42. The NIFA provides funding of $250 for each student in average daily attendance at a new instructional facility during the first school year of operation, and $250 for each new student in attendance at the facility for the second school year. The specifications for this program were adopted in 19 TAC §61.1034 in January 2000 and had not been amended since. The adopted amendment to 19 TAC §61.1034 adds language related to campus qualifications and the new electronic, web- based application and removes outdated language related to specifications for the 1999-2000 school year. This adopted amendment restores language inadvertently omitted in the original proposal regarding sending documents by certified mail, clarifies the submission deadline, and makes minor punctuation corrections.

Language is added in subsection (a)(1) to specify the qualification requirements for first-year, follow-up, and one-year funding.

Language in subsection (b) is modified to establish provisions related to the first-year application, including electronic submissions and submission of materials by certified mail; to address the deadline for submitting on-line applications and supporting documents; and to specify requirements for second-year applications.

Language in subsection (c)(3) is deleted to remove specifications related to the 1999-2000 school year. Minor punctuation changes were made in subsection (c)(5).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §42.158(f), which authorizes the commissioner of education to adopt rules as necessary to implement the new instructional facilities allotment.

The amendment implements the Texas Education Code, §42.158.

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 September 3, 2004.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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Proposal publication date: June 18, 2004
For further information, please call: (512) 475-1497

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.1, §74.3

The State Board of Education (SBOE) adopts amendments to §74.1 and §74.3, concerning curriculum requirements. The amendments are adopted without changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7622) and will not be republished. The sections establish curriculum requirements for school districts by specifying the essential knowledge and skills that must be offered and the description of required secondary curricula. The adopted amendments update provisions related to the required curriculum that school districts must offer.

On June 21, 2003, Governor Perry signed Senate Bill (SB) 815, 78th Texas Legislature, 2003, into law requiring school districts, as a condition of accreditation, to provide instruction in the Texas Essential Knowledge and Skills (TEKS) at appropriate grade levels in all subjects of the required curriculum, effective September 1, 2003. The required curriculum includes both the foundation and enrichment subjects.

Prior to the passage of SB 815, the TEKS were required in providing instruction in the foundation curriculum (English language arts, mathematics, science, social studies); whereas the TEKS were required only as "guidelines" in providing instruction in the enrichment curriculum (languages other than English, health, physical education, fine arts, economics, career and technology education, technology applications). Many school districts already use the TEKS for instruction in the enrichment content areas and have developed a rigorous curriculum that is aligned with the standards. For those districts that have not fully implemented the TEKS for the enrichment content areas, SB 815 could necessitate professional development for teachers on standards-based instruction.

The adopted amendments add language requiring school districts to provide instruction in the essential knowledge and skills for the appropriate grade levels in the enrichment curriculum in response to SB 815 and update a cross reference to include all graduation requirements in 19 TAC Chapter 74.

Specifically, 19 TAC §74.1, Essential Knowledge and Skills, is amended by adding the chapter titles of the TEKS enrichment curriculum to subsection (b) along with the foundation curriculum. Subsection (c) that identified the TEKS enrichment curriculum as guidelines is deleted.

19 TAC §74.3, Description of a Required Secondary Curriculum, is amended to add language to specify that districts may offer additional courses from the complete list of courses approved by the SBOE to satisfy graduation requirements. Currently, graduation requirements are established in several subchapters in Chapter 74, but §74.3 only cross references Subchapters B and D since Subchapter E was only recently adopted to be effective December 2003. In addition, the SBOE may decide to adopt additional subchapters in the future to address future graduation requirements. The adopted language amends §74.3(b)(3) references all the graduation requirements in 19 TAC Chapter 74. The amendment to 19 TAC §74.3 also includes the addition of new subsection (c) to address the manner in which the foundation and enrichment curriculum must be provided in Grades 6-12.

In accordance with Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the following school year, as necessary to align the rules with statute that was amended during the 78th Texas Legislature, 2003.

The following comments were received regarding adoption of the amendments.

Comment. An educator in the Houston Independent School District (ISD) expressed support for continuance of fine arts in every school in the state of Texas. The educator commented that students need to participate in music as a means of building self-esteem, social skills, discipline, and an overall sense of well being.

Response. The SBOE agrees.

Comment. A fine arts administrator in Beaumont ISD commented that the arts TEKS should be required in instruction. The administrator stated that there is much research supporting the impact of arts education on learning, retention of learning, problem-solving skills, and thinking patterns. The administrator noted that students who have had in-depth study in the arts score higher on standardized tests and perform better in school and society.

Response. The SBOE agrees.

Comment. An individual commented that fine arts education helps in all areas of academic achievement. The individual also made the following statements: Children use all parts of the brain when involved in the arts. The arts can be used to teach any subject, and the fine arts curriculum can be tied to other curriculum areas to help children learn. The arts teach problem-solving, communication skills, and higher-level thinking skills, which are essential in preparing students for today's society and world of work.

Response. The SBOE agrees.

Comment. A faculty member at Texas State University stated research supports that fine arts instruction enhances student learning for young children. The faculty member commented that fine arts should be required in Grades K-5 rather than allowing school districts to choose which fine arts courses will be offered.

The faculty member noted that student choices in upper grade levels are appropriate, but students should be exposed to all of the arts at a young age.

Response. The SBOE agrees.

Comment. An educator and staff member for the Dallas Opera stated that arts education funding is eliminated often. The commenter noted that the arts provide students with an appreciation of things that make the soul human and provide necessary experiences for future artists and musicians. The commenter expressed support for the amendment.

Response. The SBOE agrees.

Comment. The president of the New Braunfels Arts Council wrote that fine arts stimulates the creative side of our brains, the right side, which is the problem-solving side. The president commented that accomplished musicians are often good mathematicians and stated that the arts will help to build a kinder and more beautiful world.

Response. The SBOE agrees.

Comment. A fine arts administrator in the Temple ISD stated that this type of legislation that requires elementary schools to offer art, music, and theatre will truly benefit the students of Texas.

Response. The SBOE agrees.

Comment. The managing editor of the "Gulf Coast: A Journal of Literature and Fine Arts" expressed support for 19 TAC Chapter 74 to strengthen fine arts curricula. The editor stated that an education in the arts will make Texas students smarter and more creative and will also increase public perception of Texas as a beacon in the fine arts. The editor commented that this sort of positive image will increase tourism and the image of Texas as a place to live. The editor noted that school districts will be able to take advantage of the wealth of resources in the state in terms of potential teachers and performers.

Response. The SBOE agrees.

Comment. Schola Cantorum of Texas stated that all students should have exposure in each of the fine arts content areas in elementary school.

Response. The SBOE agrees.

Comment. An elementary school magnet coordinator expressed support of the 19 TAC Chapter 74 revisions because all students should have exposure in each area during elementary school.

Response. The SBOE agrees.

Comment. An individual commented that the present emphasis on mandatory testing results in any subject not tested is not a priority. Districts with at-risk students need the arts, particularly in the elementary grade levels.

Response. The SBOE agrees.

Comment. The chair of the Fort Worth Arts Education Partnership expressed support for the proposed administrative rules that would fully implement Senate Bill 815 by requiring TEKS-based instruction for each of the enrichment subjects in elementary grades K-5, which include art, music, theatre, health, physical education, and technology applications. The chair provided the following comments: The fine arts increase learning across the curriculum, increase parental involvement, and keep kids in school. Introduction to the basic skills of art, music, and theatre is most critical for the very young. Our community arts organization stands ready to support our local school districts in implementing the requirement through continuing in-school and community-based programs in addition to cost-free professional development for teachers. Our organization shares the belief that fine arts education is especially critical in the elementary grades to support learning in language, math, science, and culture and to eliminate the achievement gap created by culture or socioeconomic status. The state's challenges with public school finance should not deter us from providing equal access for all children to complete a high quality education, including the fine arts. Although school districts can go beyond the minimum requirements at present, a strong statement from the State Board of Education supporting a well-balanced curriculum would help drive the support needed at the campus and district levels to make such an education a reality.

Response. The SBOE agrees.

Comment. The education director of Performing Arts for the Fort Worth Bass Performance Hall expressed support for the proposed revisions to 19 TAC Chapter 74 and committed assistance to school districts with implementation of the rules through many outreach educational programs for students and teachers. The education director provided the following comments: All of the arts have ties to the foundation subjects, giving students a context with which to understand other cultures and other times. Students need to know that there are positive ways to express the complex, changing and often confusing feelings and ideas that are coursing through their minds and bodies.

Response. The SBOE agrees.

Comment. An individual noted that the power of the arts channel youthful energy toward positive pursuits. The individual made the following additional comments: In our juvenile detention facilities, the arts provide safe harbor for our most brilliant, talented, and fragile young people. In juvenile detention, the arts provide healing and hope. When the arts are viewed as the nonessential dessert of the educational menu, they are a low priority, both academically and budgetarily. However, when the arts are viewed as the universal leavening of the curriculum - relevant to and enriching all other subjects - their status within the education system naturally rises. The arts are a vital ingredient of a balanced education diet and facilitate absorption of other subjects, making information more palatable and available to various learning styles. The arts infuse the classroom with the excitement of dynamic learning. The arts could also reduce the population in juvenile detention facilities.

Response. The SBOE agrees.

Comments. The executive director of the Texas Coalition for Quality Arts Education quoted U.S. Secretary of Education, Rod Paige, as saying, "I believe the arts have a significant role in education both for their intrinsic value and for the ways in which they can enhance general academic achievement and improve students' social and emotional development." The executive director expressed support for the new 19 TAC Chapter 74 language that requires districts to provide standards-based instruction in the enrichment subjects in each of the Grades K-5. The executive director urged the SBOE to observe schools that infuse the arts as a central focus in children's education, such as Bethune Academy in the Aldine ISD.

Response. The SBOE agrees.

Comment. The president of the Texas Educational Theatre Association (TETA), representing over 1,200 theatre educators in the state of Texas, expressed support for the revisions to 19 TAC Chapter 74. The president stated that fine arts classes enrich the lives of children because they learn about storytelling, musical rhythms, color, and expression. The president also commented as follows: The arts enrich every other academic subject that a child studies. The president concluded by assuring the SBOE that TETA will continue to provide support for teachers, schools, and districts in the implementation of this rule.

Response. The SBOE agrees.

Comment. The executive director of the Texas Art Education Association (TAEA) expressed support for the revisions to 19 TAC Chapter 74, requiring standards-based instruction in the enrichment subjects of fine arts, health, physical education, and technology applications. The executive director stated that it is essential that the SBOE carry forward their vision to endorse a comprehensive instructional program that is centered on the needs of children of Texas. The executive director stated that it is TAEA's mission to provide strong TEKS-based curriculum, quality professional development, museum-based educational programs, and mentorship training to art teachers in the field. The executive director concluded by saying that Texas is fortunate to have an array of fine arts textbooks and that these instructional materials will provide students and teachers with valuable resources.

Response. The SBOE agrees.

Comment. The executive director of the Texas Computer Education Association expressed support for the revisions to 19 TAC Chapter 74. The executive director stated that technology is embedded in instruction in all academic disciplines and that TCEA stands ready to assist teachers, schools, and districts with implementation of this rule.

Response. The SBOE agrees.

Comment. The executive director of the Texas Music Educators Association (TMEA) expressed support for the revisions to 19 TAC Chapter 74. The executive director stated that TMEA already provides professional development for teachers and school districts on TEKS-based music instruction and will assist the Texas Education Agency with developing a "Frequently Asked Questions" document related to the rule revision.

Response. The SBOE agrees.

Comment. The vice-president for education programs for the Austin Symphony Orchestra (ASO) expressed support for the revisions to 19 TAC Chapter 74. The vice-president stated that the ASO conducts TEKS-based educational outreach programs to the children of central Texas and that other Texas symphony orchestras have similar programs.

Response. The SBOE agrees.

The amendments are adopted under the Texas Education Code, §7.102, which authorize the State Board of Education to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendments implement the Texas Education Code, §§7.102, 28.002, and 28.025.

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

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY RATINGS AND ACKNOWLEDGMENTS

DIVISION 1. STANDARD ACCOUNTABILITY SYSTEM

The Texas Education Agency (TEA) adopts an amendment to §97.1002 and the repeal of §97.1003, concerning the Texas public school accountability system, without changes to the proposal as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7624) and will not be republished. Section 97.1002 adopts by reference *Part I* of the *2002 Accountability Manual*, dated April 2002, which specifies the procedures by which the accountability system was administered in 2002. Section 97.1003 adopts by reference *Sections 1* and *2* of the *2003 Accountability Plan*, updated October 2003, which specifies the procedures by which the accountability system was administered in 2003. The adopted amendment to §97.1002 revises the rule to adopt by reference *Sections I - VI* and *VIII* of the *2004 Accountability Manual*, dated July 2004. The adopted repeal of §97.1003 removes from rule the *2003 Accountability Plan*.

Legal counsel with the TEA has recommended that the procedures for issuing regular accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1002 to refer to the most recently published accountability manual.

The adopted amendment to 19 TAC §97.1002 adopts by reference *Sections I - VI* and *VIII* of the *2004 Accountability Manual*, dated July 2004. These sections of the *2004 Accountability Manual* specify the indicators, standards, and procedures used by the

commissioner of education to determine standard accountability ratings and to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. Also specified in *Sections I - VI* and *VIII* of the *2004 Accountability Manual* are procedures for submitting an appeal and system safeguard analyses used to assess the integrity of the accountability system. The TEA will issue accountability ratings under the procedures specified in the *2004 Accountability Manual* in September 2004.

In 2004, campuses and districts will be evaluated using results from the Texas Assessment of Knowledge and Skills (TAKS) for the first time. The other 2004 base indicators are completion rates, annual dropout rates, and student performance on the State Developed Alternative Assessment (SDAA). In 2004, the GPA system will be awarded on 11 separate indicators to districts and campuses rated *Academically Acceptable* or higher: Attendance Rate for Grades 1 - 12; Advanced Academic Course Completion; Advanced Placement/International Baccalaureate Examination Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts, Mathematics, Writing, Science and/or Social Studies; TAAS/TASP Equivalency; and Recommended High School Program Participation.

The adopted repeal of 19 TAC §97.1003 pertains to the fact that the 2002 - 2003 school year was a transition year between the former accountability system and the new accountability system. 19 TAC §97.1003 was created to address the need for a separate commissioner rule pertaining to the 2003 transition plan. 19 TAC §97.1002 was maintained because the 2002 district ratings remained in effect throughout the transition year. With the advent of the updated rule for 2004, 19 TAC §97.1003 is no longer needed.

No comments were received regarding adoption of the amendment and repeal.

19 TAC §97.1002

The amendment is adopted under the Texas Education Code, §§39.051(c) - (e), 39.0721, 39.073, 39.074(a) and (b), and 39.075, which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c) - (e), 39.0721, 39.073, 39.074(a) and (b), and 39.075.

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 September 9, 2004.

TRD-200405605
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: September 29, 2004
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For further information, please call: (512) 475-1497

19 TAC §97.1003

The repeal is adopted under the Texas Education Code, §§39.051(c) - (e), 39.0721, 39.073, 39.074(a) and (b), and 39.075, which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and to determine acknowledgment on additional indicators.

The repeal implements the Texas Education Code, §§39.051(c) - (e), 39.0721, 39.073, 39.074(a) and (b), and 39.075.

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

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.9

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.9, concerning Applications with changes to the proposed text as published in the May 7, 2004, issue of the *Texas Register* (29 TexReg 4409).

The adopted amendments will implement provisions of Senate Bill 1013, 78th Legislature, Regular Session, which amended the Texas Appraiser Licensing and Certification Act (Chapter 1103, Occupations Code). The forms adopted by reference are to be used by a licensee to submit the $200 fee for an extension of time to complete continuing education, to submit the $50 fee to be placed on inactive status, and to submit the $50 fee for returning to active status. Two forms were changed to clarify the instructions for acceptance of requested information. These forms are the Extension Request Form Residential/General and State Licensed Appraisers and the Extension Request Form for Provisional Licensee.

No written comments were received regarding the proposed amendments.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the

board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

No other article, code, or statute is affected by this adopted amendments.

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser or approved as an appraiser trainee or registered as a temporary non-resident appraiser shall file an application using forms prescribed by the board. The commissioner shall review the application and make a recommendation for final action to the board. The board may decline to accept for filing an application which is materially incomplete or which is not accompanied by the appropriate fee. Except as provided by the Act, the board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

(1) pays the fees requested by the board;

(2) satisfies any experience and education requirements established by the Act or by these sections;

(3) successfully completes any qualifying examination prescribed by the board;

(4) provides all supporting documentation or information requested by the board in connection with the application; and

(5) satisfies all unresolved enforcement matters and requirements with the board.

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for Appraiser Certification or Licensing;

(2) Appraisal Experience Affidavit;

(3) Appraisal Experience Log;

(4) Application for Approval as an Appraiser Trainee;

(5) Request for Course Approval and Renewal;

(6) Temporary Non-Resident Appraiser Registration;

(7) Change of Office Address;

(8) Addition or Termination of Appraiser Trainee Sponsorship;

(9) Supplement to Application for Appraiser Certification or Licensing by Reciprocity;

(10) Extension of Non-Resident Temporary Practice Registration;

(11) Extension Request Form Residential/General and State Licensed Appraisers;

(12) Extension Request Form for Provisional Licensee;

(13) Request for Inactive Status Form (For Currently Certified or State Licensed Appraisers;

(14) Request for Inactive Status Form (For an Expired Licensee-Not for Provisional Licensee); and

(15) Request for Active Status Form.

(c) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the board makes written request for the information or documentation.

(d) A certification, license, or appraiser trainee approval is valid for the term for which it is issued by the board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval).

(e) The board may deny certification, licensing, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who fails to satisfy the board as to the applicant's honesty, trustworthiness, and integrity.

(f) The board may deny certification, licensure, approval as an appraiser trainee, or registration for non-resident temporary practice to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(g) An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the board, or within one year of the date of the applicant's last examination, whichever occurs later.

(h) When an application is denied by the Board, no subsequent application will be accepted within one year of the application denial.

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 September 10, 2004.

TRD-200405626
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: September 30, 2004
Proposal publication date: May 7, 2004
For further information, please call: (512) 465-3950

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §§217.2, 217.4, 217.5

The Board of Nurse Examiners adopts amendments to §§217.2, 217.4, and 217.5, addressing Licensure, Peer Assistance and Practice, for the purpose of consolidating the rules and having licensure requirements for all nurses in the same sections. Sections 217.4 and 217.5 are adopted with changes to the text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7627). Section 217.2 is adopted without changes and will not be republished.

The only changes are non-substantive and are to hyphenate "even-numbered" and "odd-numbered" in §217.4(e) and §217.5(d) for consistency.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational

Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that consolidated the boards. These adopted amendments continue the process of implementing HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these amendments updating the licensure requirements of all nurses, the Board is repealing 22 TAC §§235.2 - 235.9, 235.11, 235.12, 235.15, 235.16, and 235.18 to avoid redundancy or possible confusion. All the adopted amended sections address and include the declaratory order process which is now required of all nurses (Tex. Occ. Code Ann. §301.257).

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of the amendments will not affect any existing statute.

§217.4. Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdictions.

(a) Nurse applicants for initial licensure applying under this section.

(1) A licensed vocational nurse applicant must:

(A) hold a high school diploma issued by an accredited secondary school or equivalent educational credentials as established by the General Education Development Equivalency Test (GED);

(B) have successfully completed an approved program for educating vocational/practical (second level general nurses) nurses or curriculum content comparable to the Texas curriculum requirements for graduates of approved vocational nursing education programs as evidenced by a transcript in English or one translated by an official translation service; and

(C) have passed an examination of English proficiency with a board-approved score.

(2) A registered nurse applicant must provide a Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate, or a CGFNS Credential Evaluation Service Full Education Course-by-Course Report and an English proficiency test acceptable to the Board, or the equivalent which verifies that the applicant:

(A) has the educational credentials equivalent to graduation from a governmentally accredited/approved, post-secondary general nursing program of at least two academic years in length;

(B) received both theory and clinical education in each of the following: nursing care of the adult which includes both medical and surgical nursing, maternal/infant nursing, nursing care of children, and psychiatric/mental health nursing;

(C) received initial registration/license as a first-level, general nurse in the country where the applicant completed general nursing education;

(D) is currently registered/licensed as a first-level general nurse;

(E) demonstrated proficiency in the English language; and

(F) passed the CGFNS Qualifying Exam, if submitting a CGFNS certificate.

(3) all applicants must file a complete, notarized application for registration containing data required by the board and the required application processing fee which is not refundable;

(4) all applicants must pass the NCLEX-PN (LVN applicants) or NCLEX-RN (RN applicants) as a Texas applicant;

(A) within four years of completion of the requirements for graduation from the nursing education program if the applicant has not practiced as a second-level or first-level general nurse since completing the requirements for graduation; or

(B) within four years of the date of eligibility for the NCLEX-PN or NCLEX-RN if the applicant has practiced as a second-level or first-level general nurse at least two years since completing the requirements for graduation; and

(5) all registered nurse applicants must submit FBI fingerprint cards provided by the Board for a complete criminal background check.

(b) An applicant who has completed the requirements for graduation and has practiced as a second-level or first-level general nurse for at least two years but has not practiced as a second-level or first-level general nurse within the four years immediately preceding the filing of an application for initial licensure will be issued a six month limited permit (temporary authorization) upon passing the NCLEX-PN or NCLEX-RN examination and must complete a nurse refresher course that meets the criteria defined by the Board in order to be eligible for licensure under this section.

(c) An applicant who has not passed the NCLEX-PN or NCLEX-RN within four years of completion of the requirements for graduation or within four years of the date of eligibility must complete an appropriate nursing education program in order to be eligible to take or retake the examination.

(d) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled by way of a Petition for Declaratory Order, (see §213.30 of this title relating to Declaratory Order of Eligibility for Licensure and Texas Occupations Code §301.257 relating to Declaratory Order of License Eligibility) then the application will be treated and processed as a Petition for Declaratory Order and the applicant will be required to pay the appropriate non-refundable processing fees. Should the Board finally determine that the individual is not eligible to be admitted to the examination, then that individual is precluded from again petitioning, or applying to the Board for admission to the examination except when the impediment to eligibility for licensure has been removed. In no event, may an applicant re-petition for a declaratory order before the first anniversary of the date of the Board's determination to deny eligibility. Any subsequent petition must be made in the manner and form the Board requires.

(e) Upon initial licensure by examination, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

§217.5. Temporary License and Endorsement.

(a) The requirements to obtain a non-renewable temporary license which is valid for 120 days, or a permanent license for endorsement are as follows:

(1) Graduation from an approved nursing education program.

(2) Satisfactory completion of the licensure examination according to board established minimum passing scores:

(A) Vocational Nurse Licensure Examination:

(i) Prior to April 1982--a score of 350 on the SBTPE;

(ii) Beginning October 1982 to September 1988--a score of 350 on the NCLEX-PN ; and

(iii) October 1988 and after, must have achieved a passing report on NCLEX-PN .

(B) Registered Nurse Licensure Examination:

(i) Prior to July 1982--a score of 350 on each of the five parts of the SBTPE;

(ii) Prior to February 1989--a minimum score of 1600 on NCLEX-RN ; and

(iii) February 1989 and after, must have achieved a passing report on NCLEX-RN .

(3) Licensure by another U.S. jurisdiction.

(4) For an applicant who has graduated from a nursing education program outside of the United States or National Council jurisdictions--verification of LVN licensure as required in §217.4(a)(1) or verification of RN licensure must be submitted from their country of education or evidence of completion of CGFNS requirements, as well as meeting all other requirements in paragraphs (2)-(3) of this subsection.

(5) Filing a completed notarized "Application for Temporary License/Endorsement" containing:

(A) personal identification and verification of required information in paragraphs (1) - (3) of this subsection;

(B) attestation that the applicant meets current Texas licensure requirements and has never had disciplinary action taken by any licensing authority or jurisdiction in which the applicant holds, or has held licensure;

(C) a recent, fade-proof passport sized identification photograph, properly identified;

(6) the required application processing licensure fee, which is not refundable; and

(7) RN applicants must submit FBI fingerprint cards provided by the Board for a complete criminal background check.

(b) A nurse who has not practiced nursing within the four years immediately preceding the request for temporary licensure, shall meet the requirements as stated in §217.9 of this title (relating to Inactive Status).

(c) A nurse who has had disciplinary action at any time by any licensing authority is not eligible for temporary licensure until completion of the eligibility determination.

(d) Upon initial licensure by endorsement, the license is issued for a period ranging from six months to 29 months depending on the birth month. Licensees born in even-numbered years shall renew their licenses in even-numbered years; licensees born in odd-numbered years shall renew their licenses in odd-numbered years.

(e) Should it be ascertained from the application filed, or from other sources, that the applicant should have had an eligibility issue settled in accordance with Texas Occupations Code §301.257 (Declaratory Order of License Eligibility) and §§213.27, 213.28 and 213.29 (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, and Eligibility and Disciplinary Criteria Regarding Intemperate Use and Lack of Fitness), then the application will be treated and processed as a Petition for Eligibility Order for LVN or RN Endorsement and the applicant will be required to pay the appropriate processing fees which are not refundable.

(f) Should the Board in its final determination find that the individual is not eligible for licensure as a nurse in Texas, then that individual is precluded from again petitioning, or applying to the Board for licensure until the impediment to eligibility for licensure has been removed.

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 September 8, 2004.

TRD-200405597
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: September 28, 2004
Proposal publication date: August 6, 2004
For further information, please call: (512) 305-6823

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22 TAC §217.11, §217.12

The Board of Nurse Examiners adopts the repeal of §217.11 and §217.12, relating to Standards of Professional Nursing Practice and Unprofessional Conduct, respectively without changes to the proposal as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7630) and will not be republished.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that consolidated the boards. This adopted repeal continues the process of implementing HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with this repeal which specifically addresses registered nurses (RNs) is the adopted repeal of the former Board of Licensed Vocational Nurse Examiners existing §239.11 addressing unprofessional conduct by licensed vocational nurses (LVNs) and the adoption of new 22 TAC §217.11 and §217.12 which addresses standards of practice and unprofessional conduct applicable to all nurses. This adopted repeal will also prevent conflicting rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of the repeals will not affect any existing 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.

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Katherine Thomas
Executive Director
Board of Nurse Examiners
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For further information, please call: (512) 305-6823

22 TAC §217.11, §217.12

The Board of Nurse Examiners adopts new §217.11 and §217.12, relating to Standards of Nursing Practice and Unprofessional Conduct, respectively with changes to the text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7630).

Editorial changes were made in §217.11(3) and (4) by changing the colons to periods after the initial phrases and hyphens were added to §217.12(1),(5), (6), (10) and (11) which failed to make it into the initial proposal.

Effective February 1, 2004, the Board of Nurse Examiners (BNE) and the Board of Vocational Nurse Examiners (BVNE) were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that consolidated the boards. These adopted new rules continue the process of implementing HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with these adopted rules which address all nurses is the adopted repeal of the former Board of Licensed Vocational Nurse Examiners §239.11 addressing unprofessional conduct by licensed vocational nurses (LVNs) and the adopted repeal of 22 TAC §217.11 and §217.12 which specifically address standards of practice and unprofessional conduct applicable to registered nurses (RNs).

Comments were received from the Texas Hospital Association (THA) and Texas Nurses Association (TNA) in support of the new rules.

The new rules are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of the new rules will affect the enforcement of Texas Occupations Code §301.452(b)(10) and (13).

§217.11. Standards of Nursing Practice.

The Texas Board of Nurse Examiners is responsible for regulating the practice of nursing within the State of Texas for Vocational Nurses, Registered Nurses, and Registered Nurses with advanced practice authorization. The standards of practice establish a minimum acceptable level of nursing practice in any setting for each level of nursing licensure or advanced practice authorization. Failure to meet these standards may result in action against the nurse's license even if no actual patient injury resulted.

(1) Standards Applicable to All Nurses. All vocational nurses, registered nurses and registered nurses with advanced practice authorization shall:

(A) Know and conform to the Texas Nursing Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice;

(B) Implement measures to promote a safe environment for clients and others;

(C) Know the rationale for and the effects of medications and treatments and shall correctly administer the same;

(D) Accurately and completely report and document:

(i) the client's status including signs and symptoms;

(ii) nursing care rendered;

(iii) physician, dentist or podiatrist orders;

(iv) administration of medications and treatments;

(v) client response(s); and

(vi) contacts with other health care team members concerning significant events regarding client's status;

(E) Respect the client's right to privacy by protecting confidential information unless required or allowed by law to disclose the information;

(F) Promote and participate in education and counseling to a client(s) and, where applicable, the family/significant other(s) based on health needs;

(G) Obtain instruction and supervision as necessary when implementing nursing procedures or practices;

(H) Make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations;

(I) Notify the appropriate supervisor when leaving a nursing assignment;

(J) Know, recognize, and maintain professional boundaries of the nurse-client relationship;

(K) Comply with mandatory reporting requirements of Texas Occupations Code ch. 301, Subchapter I, which include:

(i) unnecessary or likely exposure by the nurse of a client or other person to a risk of harm;

(ii) unprofessional conduct by a nurse;

(iii) failure by a nurse to adequately care for a client;

(iv) failure by a nurse to conform to the minimum standards of acceptable nursing practice;

(v) impairment or likely impairment of a nurse's practice by chemical dependency; or

(vi) exclusions for minor incidents (Tex. Occ. Code §301.419, 22 TAC §217.16), peer review (Tex. Occ. Code §§301.403, 303.007, 22 TAC §217.19), or peer assistance (Tex. Occ. Code §301.410) as stated in the Nursing Practice Act and Board rules (22 TAC ch. 217).

(L) Provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, health problems, or sexual orientation of the client served;

(M) Institute appropriate nursing interventions that might be required to stabilize a client's condition and/or prevent complications;

(N) Clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-efficacious or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the nurse makes the decision not to administer the medication or treatment;

(O) Implement measures to prevent exposure to infectious pathogens and communicable conditions;

(P) Collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;

(Q) Consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(R) Be responsible for one's own continuing competence in nursing practice and individual professional growth;

(S) Make assignments to others that take into consideration client safety and that are commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made;

(T) Accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(U) Supervise nursing care provided by others for whom the nurse is professionally responsible; and

(V) Ensure the verification of current Texas licensure or other Compact State licensure privilege and credentials of personnel for whom the nurse is administratively responsible, when acting in the role of nurse administrator.

(2) Standards Specific to Vocational Nurses. The licensed vocational nurse practice is a directed scope of nursing practice under the supervision of a registered nurse, advanced practice registered nurse, physician's assistant, physician, podiatrist, or dentist. Supervision is the process of directing, guiding, and influencing the outcome of an individual's performance of an activity. The licensed vocational nurse shall assist in the determination of predictable healthcare needs of clients within healthcare settings and:

(A) Shall utilize a systematic approach to provide individualized, goal-directed nursing care by:

(i) collecting data and performing focused nursing assessments;

(ii) participating in the planning of nursing care needs for clients;

(iii) participating in the development and modification of the comprehensive nursing care plan for assigned clients;

(iv) implementing appropriate aspects of care within the LVN's scope of practice; and

(v) assisting in the evaluation of the client's responses to nursing interventions and the identification of client needs;

(B) Shall assign specific tasks, activities and functions to unlicensed personnel commensurate with the educational preparation, experience, knowledge, and physical and emotional ability of the person to whom the assignments are made and shall maintain appropriate supervision of unlicensed personnel.

(C) May perform other acts that require education and training as prescribed by board rules and policies, commensurate with the licensed vocational nurse's experience, continuing education, and demonstrated licensed vocational nurse competencies.

(3) Standards Specific to Registered Nurses. The registered nurse shall assist in the determination of healthcare needs of clients and shall:

(A) Utilize a systematic approach to provide individualized, goal-directed, nursing care by:

(i) performing comprehensive nursing assessments regarding the health status of the client;

(ii) making nursing diagnoses that serve as the basis for the strategy of care;

(iii) developing a plan of care based on the assessment and nursing diagnosis;

(iv) implementing nursing care; and

(v) evaluating the client's responses to nursing interventions;

(B) Delegate tasks to unlicensed personnel in compliance with 22 Tex. Admin. Code chapter 224, relating to clients with acute conditions or in acute are environments, and chapter 225, relating to independent living environments for clients with stable and predictable conditions.

(4) Standards Specific to Registered Nurses with Advanced Practice Authorization. Standards for a specific role and specialty of advanced practice nurse supersede standards for registered nurses where conflict between the standards, if any, exist. In addition to paragraphs (1) and (3) above, a registered nurse who holds authorization to practice as an advanced practice nurse (APN) shall:

(A) Practice in an advanced nursing practice role and specialty in accordance with authorization granted under Board Rule 221 (relating to practicing in an APN role; 22 TAC ch. 221) and standards set out in that Rule.

(B) Prescribe medications in accordance with prescriptive authority granted under Board Rule 222 (relating to APNs prescribing; 22 TAC ch. 222) and standards set out in that Rule and in compliance with state and federal laws and regulations relating to prescription of dangerous drugs and controlled substances.

§217.12. Unprofessional Conduct.

The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of a nurse which the board believes are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

(1) Unsafe Practice--actions or conduct including, but not limited to:

(A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Rule 217.11.

(B) Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings;

(C) Improper management of client records;

(D) Delegating or assigning nursing functions or a prescribed health function when the delegation or assignment could reasonably be expected to result in unsafe or ineffective client care;

(E) Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care;

(F) Failing to supervise the performance of tasks by any individual working pursuant to the nurse's delegation or assignment; or

(G) Failure of a clinical nursing instructor to adequately supervise or to assure adequate supervision of student experiences.

(2) Failure of a chief administrative nurse to follow appropriate and recognized standards and guidelines in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible.

(3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the board in granting a coded license or any stipulated agreement with the board.

(4) Careless or repetitive conduct that may endanger a client's life, health, or safety. Actual injury to a client need not be established.

(5) Inability to Practice Safely--demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness, use of alcohol, drugs, chemicals, or any other mood-altering substances, or as a result of any mental or physical condition.

(6) Misconduct--actions or conduct that include, but are not limited to:

(A) Falsifying reports, client documentation, agency records or other documents;

(B) Failing to cooperate with a lawful investigation conducted by the board;

(C) Causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;

(D) Violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional or financial exploitation of the client or the client's significant other(s);

(E) Engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same;

(F) Threatening or violent behavior in the workplace;

(G) Misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation;

(H) Providing information which was false, deceptive, or misleading in connection with the practice of nursing;

(I) Failing to answer specific questions or providing false or misleading answers that would have affected the decision to license, employ, certify or otherwise utilize a nurse; or

(J) Offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.

(7) Failure to repay a guaranteed student loan, as provided in the Texas Education Code §57.491, or pay child support payments as required by the Texas Family Code §232.001, et seq.

(8) Drug Diversion--diversion or attempts to divert drugs or controlled substances.

(9) Dismissal from a board-approved peer assistance program for noncompliance and referral by that program to the BNE.

(10) Other Drug Related--actions or conduct that include, but are not limited to:

(A) Use of any controlled substance or any drug, prescribed or unprescribed, or device or alcoholic beverages while on duty or on call and to the extent that such use may impair the nurse's ability to safely conduct to the public the practice authorized by the nurse's license;

(B) Falsification of or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances;

(C) Failing to follow the policy and procedure in place for the wastage of medications at the facility where the nurse was employed or working at the time of the incident(s);

(D) A positive drug screen for which there is no lawful prescription; or

(E) Obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception and/or subterfuge.

(11) Unlawful Practice--actions or conduct that include, but are not limited to:

(A) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of vocational, registered or advanced practice nursing;

(B) Violating an order of the board, or carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered or advanced practice nursing, or violating a state or federal narcotics or controlled substance law;

(C) Knowingly aiding, assisting, advising, or allowing a nurse under Board Order to violate the conditions set forth in the Order; or

(D) Failing to report violations of the Nursing Practice Act and/or the Board's rules and regulations.

(12) Leaving a nursing assignment, including a supervisory assignment, without notifying the appropriate personnel.

(13) Criminal Conduct--including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing.

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 September 8, 2004.

TRD-200405604

Katherine Thomas
Executive Director
Board of Nurse Examiners
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For further information, please call: (512) 305-6823

CHAPTER 223. FEES

22 TAC §223.1

The Board of Nurse Examiners adopts amendments to §223.1 (Fees) without changes to the text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7634) and will not be republished.

These fee increases and changes are necessary in order to comply with legislative requisites imposed by Senate Bill 1152 (SB1152) affecting Texas Online and to conform the language to that in the Nursing Practice Act, Texas Occupations Code §301.157 (Programs of Study and Approval). Subsection (a)(9) is amended to update the wording and process performed by the board in approving new nursing education programs.

The effect of this adopted amendment is that the initial licensure fees will increase by $4 to $74 and the endorsement fees will increase by $5 to $135 in order to fund Texas Online. This change in fees also affects the reactivation of a delinquent license fee due to section 301.301 of the Texas Occupations Code. It states that a license delinquent for less than 90 days shall pay the renewal fee plus "one-half the amount charged for examination for the license" which is $37 dollars plus the renewal fee. If a license is renewed after being delinquent for over 90 days but less than one year, the nurse shall pay the renewal fee plus the full amount charged for examination for the license.

No comments were received regarding adoption of the amendment.

The amendment is adopted under §301.151 and §301.155 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

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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Katherine Thomas
Executive Director
Board of Nurse Examiners
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CHAPTER 235. LICENSING
SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §§235.2 - 235.9, 235.11, 235.12, 235.15, 235.16, 235.18

The Board of Nurse Examiners adopts the repeal of §§235.2 - 235.9, 235.11, 235.12, 235.15, 235.16, and 235.18, Subchapter A (Application for Licensure) without changes to the proposal as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7634) and will not be republished.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency. House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that consolidated the boards. This adopted repeal continues the process of implementing HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with this repeal which specifically addresses the licensing process of Licensed Vocational Nurse Examiners is the adoption of new amendments 22 TAC §§217.2, 217.4, and 217.5 which includes licensure standards applicable to all nurses. This adopted repeal will also prevent conflicting rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of the repeals will not affect any existing 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.

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Katherine Thomas
Executive Director
Board of Nurse Examiners
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CHAPTER 239. CONTESTED CASE PROCEDURE
SUBCHAPTER B. ENFORCEMENT

22 TAC §239.11

The Board of Nurse Examiners adopts the repeal of Chapter 239, Contested Case Procedure, and specifically Subchapter B (Enforcement), §239.11, concerning Unprofessional Conduct without changes to the proposal as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7635) and will not be republished.

Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. The Board of Vocational Nurse Examiners ceased to exist as an agency.

House Bill 1483, passed by the 78th Regular Legislative Session, was the legislative action that consolidated the boards. This adopted repeal continues the process of implementing HB 1483 and the make-up and function of the new Board of Nurse Examiners. Concurrent with this repeal which specifically addresses licensed vocational nurses (LVNs) is the adopted repeal of the Board of Nurse Examiners existing §217.12 addressing unprofessional conduct by registered nurses (RNs) and the adoption of a new 22 TAC §217.12 which addresses unprofessional conduct applicable to all nurses. This adopted repeal will also prevent conflicting rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The adoption of this repeal will not affect any existing 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 September 8, 2004.

TRD-200405589
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: September 28, 2004
Proposal publication date: August 6, 2004
For further information, please call: (512) 305-6823

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Commissioner of Insurance adopts amendments to §9.1 and §9.401 which concern the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The amended sections are adopted with changes to the proposed text as published in the August 6, 2004, issue of the *Texas Register* (29 TexReg 7645). There are also changes to the Statistical Plan, which is adopted by reference.

The amendments to the Basic Manual adopt a new form T-37A, Immediately Available Funds Procedure Agreement (Agent Designation for Federally-insured Lender), to include a designated agent of a federally-insured lender as a party to an agreement that defines procedures to make funds immediately available among a financial institution, a title company, and a federally-insured lender. The adopted new form will accommodate mortgage lending practices involving warehouse lenders while providing safeguards that funds are available. In conjunction with the adopted new form, amendments have also been made to procedural rule P-27, Disbursement from Escrow or Trust Fund Accounts, to conform the language of this procedural rule for use with the new form. The amendments to the Statistical Plan update the codes and other reporting requirements that have occurred since the last two Texas Title Insurance Biennial hearings. Adopting new forms and updated codes and reporting requirements will facilitate the administration and regulation of title insurance in this state and provide for more efficient reporting of statistical data by title companies. The effective date of the sections as published in the proposal was October 1, 2004; the effective date of the sections has been changed to November 1, 2004. The department has also made typographical changes to the text of §9.1, and in response to comments regarding statistical code 1230, has added a reference to Rate Rule R-5c to encompass this additional type of credit based on a previously issued policy.

HOW THE SECTIONS WILL FUNCTION. The adopted amendment to §9.1 updates the date of the form and sections added to the Basic Manual. The adopted new form T-37A, Immediately Available Funds Procedure Agreement (Agent Designation for Federally-insured Lender), includes a designated agent of a federally-insured lender as a party to an agreement that defines procedures to make funds immediately available among a financial institution, a title company, and a federally-insured lender. The amendments to procedural rule P-27, Disbursement from Escrow or Trust Fund Accounts, conform the language of this procedural rule for use with the new form. The adopted amendment to §9.401 updates the date of the amended Statistical Plan. The amendments to the Statistical Plan update the codes and other reporting requirements that have occurred since the last two Texas Title Insurance Biennial hearings.

SUMMARY OF COMMENTS AND AGENCY RESPONSE TO COMMENTS.

Comment: One commenter inquired about the code for a credit for a previously issued owner policy when issuing a new owner policy simultaneously with a mortgagee policy as represented by the conditions stated in Rate Rule R-5c. This rate rule provision was adopted in the last biennial hearing.

Agency Response: The department agrees that this rate rule credit resulting from the last biennial hearing should be included in the Statistical Plan and has added the reference to R-5c under the code 1230, which represents these types of credits on simultaneously issued policies.

Comment: One commenter submitted various changes to the Statistical Plan in response to the Notice of Call for Issues Related to the 2004 Biennial Title Hearing. Some of the changes concern deletion of items currently in the Statistical Plan and other changes would result from proceedings in the biennial hearing.

Agency Response: The department believes that the totality of the commenter's suggested changes would be more efficiently reviewed as part of the biennial hearing process and will consider those changes at that time.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS. For with changes: Software company; Southern Title Insurance Corporation.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The amended sections are adopted under the Insurance Code Articles 9.07 and 9.21, and §36.001. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective November 1, 2004. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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 September 10, 2004.

TRD-200405623
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: August 6, 2004
For further information, please call: (512) 463-6327

SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

The amended sections are adopted under the Insurance Code Articles 9.07 and 9.21, and §36.001. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules contained in the Texas Title Insurance Statistical Plan as amended effective November 1, 2004. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.318, 65.320, 65.321

The Texas Parks and Wildlife Department adopts amendments to §§65.318, 65.320, and 65.321, concerning the Migratory Game Bird Proclamation, with changes to the proposed text as published in the June 4, 2004, issue of the *Texas Register* (29 TexReg 5543) .

The change to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season Species, consists of several components. The change alters the proposed season dates for ducks in the High Plains Management Unit (HPMMU), the North Duck Zone, and the South Duck Zone. The proposed season in the HPMMU would have been split into two segments, the first from October 30 to November 1 and the second from November 6 to January 30. The adopted season retains the split-season structure, but runs from September 27 to October 4 and October 30 to January 25. The proposed restricted season for pintails and canvasbacks in the HPMMU would have run from December 23 to January 30; the adopted season will run from December 18 to January 25. The proposed season in the North Zone would have been split into two segments, the first from November 13 to November 14 and the second from November 20 to January 30; the adopted season retains the split-season structure, but runs from November 6 to November 28 and December 11 to January 30. The proposed season in the South Zone would have been split into two segments, the first to run from October 30 to October 31 and the second from November 6 to January 16; the adopted season retains the split-season structure, but runs from September 27 to October 3 and November 13 to January 18. The proposed restricted season for pintails and canvasbacks in

the South Zone would have run from December 23 to January 30; the adopted season will run from December 11 to January 18.

The change also alters the dates of the youth-only waterfowl season in the HPMMU and the South Duck Zone. The proposed season would have taken place October 16-17, but because the department has selected a different opening date for the regular duck season (September 27 in both zones), the youth season must be moved so that it does not fall within the regular duck season. In the HPMMU, the youth season will be October 23-24, 2004. In the South Zone, the youth season will be October 30-31.

In addition, the change to the section as proposed removes language that would have provided for a reduced aggregate bag limit for ducks in exchange for season-long pintail and canvasback opportunity. The change is necessary because the proposal was not approved by the U.S. Fish and Wildlife Service.

The change to §65.318 also alters the proposed seasons for light and dark geese in both the eastern and western zones. The proposed season dates in the Western Goose Zone were October 30, 2004 - February 8, 2005 for light geese and November 6, 2004 - February 8, 2005 for dark geese. The rule as adopted creates a season for both light and dark geese in the Western Zone to run from October 30, 2004-February 1, 2005. The proposed season dates in the Eastern Goose Zone were altered because of the elimination of the north-south compartmentalization in that zone. The change is necessary because the department concluded that north-south division of the zone was causing hunter confusion; the change is intended to simplify compliance with goose regulations.

The change to §65.318 also alters the proposed seasons for sandhill cranes in Zone A and Zone B. The proposed season in Zone A was to run from November 6 to February 6; as adopted, it will run from November 6 to February 1. The proposed season in Zone B was to run from November 27 to February 6; as adopted, it will run from November 27 to February 1. The changes are necessary because by federal law no other migratory game bird season can be open during the light goose conservation season. The department's cooperation in the multinational effort to control snow goose populations is critical; therefore, it is necessary to curtail the season for sandhill cranes in Zone A and Zone B in order to maximize the conservation season.

The change to §65.320, concerning Extended Falconry Season-Late Season Species, alters the proposed falconry season dates. The proposed season dates were January 31 - February 14 in the North Zone and January 17 - January 31 in the South Zone; the adopted dates are January 31 - February 21 in the North Zone and January 19 - February 9 in the South Zone. The change is necessary because the department's other changes to firearms seasons would have caused those seasons to overlap the falconry seasons as proposed. The new season dates are consistent with hunter preference that season dates for falconry be as late in the season as possible.

The change to §65.321, concerning Special Management Provisions, eliminates the north-south compartmentalization in the Eastern Zone, thus forming a single area for the take of light geese during the conservation order. The change is necessary because of the reorganization of the Eastern Goose Zone. The change also imposes new season dates for the conservation season, which is necessary because of the changes in season dates for the regular goose season. By federal law, no other migratory game bird season can be open during the conservation season.

The rules establishing the seasons and bag limits are promulgated on an annual basis. The amendment to §65.118 is necessary to establish the season dates for the lawful take of late-season species of migratory game birds in the state in 2004-2005. The amendment to §65.320 is necessary to establish the season dates in 2004-2005 for the lawful take of late-season species of migratory game birds in the state when take is restricted to falconry. The amendment to §65.321 is necessary to establish dates in 2004-2005 for the take of light geese during the special conservation season in order to participate in the multinational effort to reduce habitat degradation by snow geese on their breeding grounds in Canada. The amendments are also necessary, generally, to implement Texas Parks and Wildlife Commission (commission) policy to provide the greatest hunter opportunity possible under frameworks issued by the U.S. Fish and Wildlife Service.

The rules will function, individually and collectively, to establish the times when it is lawful to take late-season species of migratory birds in the state, and the bag and possession limits for those species.

In the preamble of the proposed rule action the department noted that the Service had not yet issued regulatory frameworks for the 2004-2005 hunting seasons for migratory game birds, and stressed that the proposed rules were tentative and subject to significant change, depending on federal actions.

The department received 61 comments from persons who opposed the proposed duck season dates in the South Zone by stating a preference for a split season to run from September 27 to October 3 and November 13 to January 18. The department agrees with the comments and has made changes accordingly.

The department received 201 comments from persons who opposed the proposed duck season dates in the South Zone, preferring a split season to run from October 30 to December 5 and December 18 to January 23. The department disagrees with the comments. Under annual frameworks issued by the U.S. Fish and Wildlife Service, Texas is allotted a maximum number of hunting days that can only be utilized between September 25 and January 30. The Service also stipulates maximum bag limits. The federal frameworks are based on population and harvest data from the previous year, which are interpreted according to specific numerical management criteria. The final frameworks are intended by the federal government to severely minimize if not eliminate the possibility of over harvest. Therefore, there are no negative biological implications associated with regulations adopted under the frameworks. This year, the federal framework provides 74 days of waterfowl hunting but restricts the take of pintail and canvasback ducks to 39 days. Hunter surveys indicate that hunters enjoy greater success in a split-season structure.

Four commenters stated a preference for a longer period between season splits and for the second split to run until January 30 in the South Zone. The department disagrees with the comment and responds that data does not indicate hunter success in general is greater later in the year, but there are species desired by hunters that are more numerous earlier in the year in the South Zone. In order to equitably distribute hunting opportunity among the various appreciations, the department has followed the suggestion of the Migratory Game Bird Advisory Board and provided hunting opportunity for those who prefer early-season

hunting. In order to accomplish this, a portion of the 74 days allotted by the Service was removed from the back end of the second split. No changes were made as a result of the comments.

Five commenters stated that it was too hot in late September for good hunting. The department disagrees and responds that whistling ducks and teal, for instance, are numerous in September and October, and that there are hunters who prefer to hunt at that time because they prefer those species. No changes were made as a result of the comment.

One commenter requested that the department adopt a three-bird daily bag limit. The department disagrees with the comment and responds that the bag limits authorized under federal frameworks are intentionally designed to minimize the possibility of over harvest. Therefore, in keeping with commission policy to provide the maximum hunter opportunity possible, the department has adopted the most liberal bag limits allowable under the federal frameworks. No changes were made as a result of the comment.

One commenter requested that the department adopt a four-bird daily bag limit. The department disagrees with the comment and responds that the bag limits authorized under federal frameworks are intentionally designed to minimize the possibility of over harvest. Therefore, in keeping with commission policy to provide the maximum hunter opportunity possible, the department has adopted the most liberal bag limits allowable under the federal frameworks. No changes were made as a result of the comment.

One commenter requested that the department eliminate the five-duck bag limit as applied to Mexican mallards in order to increase survival for mottled ducks. The department disagrees with the comment and responds that over harvest is not believed to a factor affecting mottled duck survival. No changes were made as a result of the comment.

Four commenters stated that the South Zone dates should be the same as those of the North Zone. The department disagrees with the comment and responds that not all species of ducks migrate at the same time or to the same places, and that various species of ducks exhibit markedly different migration patterns and habits. The structure of the South Zone season is designed to equitably distribute hunting opportunity for various species that can be found in the South Zone. No changes were made as a result of the comments.

Two commenters stated that there are not enough ducks to hunt in the South Zone during late September. The department disagrees with the comment and responds that certain species of ducks are not as numerous as others, but are desired by hunters nonetheless. The department's intent is to equitably distribute hunting opportunity based on hunter preference. No changes were made as a result of the comments.

One commenter stated a preference for the season to run as late as possible to allow for higher-quality plumage on the birds. The department disagrees with the comment and responds that in order to equitably distribute hunting opportunity among the various appreciations, the department has followed the suggestion of the Migratory Game Bird Advisory Board and provided hunting opportunity for those who prefer early-season hunting. In order to accomplish this, a portion of the 74 days allotted by the Service was removed from the back end of the second split. No changes were made as a result of the comment.

One commenter requested that black-bellied and whistling ducks be made legal species during the early teal season. The department disagrees with the comment and responds that early teal season for 2004-2005 has already been adopted and is not subject to this rulemaking. In order to equitably distribute hunting opportunity among the various appreciations, the department has followed the suggestion of the Migratory Game Bird Advisory Board and provided hunting opportunity for those who prefer early-season hunting. In order to accomplish this, a portion of the 74 days allotted by the Service was removed from the back end of the second split. No changes were made as a result of the comment.

Six commenters stated that the season needs to run as late as possible. The department agrees with the comments, to an extent, but points out the need to equitably distribute hunting opportunity among a variety of appreciations. No changes were made as a result of the comment.

Two commenters stated that a later start provides the best opportunity. The department disagrees with the comment and responds that for some species such as teal and whistling ducks, the best opportunity occurs earlier rather than later, which is why the department has adopted a September opener in the South Zone. No changes were made as a result of the comment.

Three commenters stated that an early opener in the South Zone will result in the over harvest of mottled ducks. The department disagrees and responds that over harvest is not believed to a factor affecting mottled duck survival, and that in any event, the federal frameworks are designed to prevent over harvest. No changes were made as a result of the comment.

One commenter stated that the youth-only season should be eliminated because it is discriminatory. The department disagrees with the comment and responds that the youth-only season is not discriminatory, since it does not deprive anyone of hunting opportunity. No changes were made as a result of the comment.

Two commenters stated that the season should be closed on pintail and canvasbacks in order to allow the species to repopulate. The department disagrees with the comment and responds that the federal management strategy would dictate the closure of any season if a population were in danger. No changes were made as a result of the comment.

One commenter requested that the restricted pintail season be distributed equally within the two splits, stating that many are left lying in the field. The department disagrees with the comment and responds that it is less confusing to hunters and easier to enforce if the pintail season occurs only in one split. The department also notes that it is an offense to fail to retrieve downed birds. No changes were made as a result of the comment.

One commenter stated that the bag limits on widgeon and gadwall should be lowered. The department disagrees with the comment and responds that the federal management strategy would dictate the closure of any season if a population were in danger. No changes were made as a result of the comment.

One commenter stated that all bag limits should be lowered. The department disagrees with the comment and responds that the federal management strategy would dictate the closure of any season if a population were in danger. No changes were made as a result of the comment.

One commenter stated that if the duck season started immediately following the teal season, the population would not be able

to build. The department disagrees with the comment and responds that migration patterns of ducks will ensure movement of ducks into the South Zone. No changes were made as a result of the comment.

Two commenters stated that an early opener would result in mottled ducks and pintails being taken by accident. The department disagrees with the comment and responds that although due to the inevitability of human error there will almost certainly be accidental take, the department does not believe that it has or will occur on a scale to result in biological damage to the resource. No changes were made as a result of the comments.

Two commenters requested a shorter season, more splits, and lower bag limits. One of the commenters stated that the quality of hunts is getting worse due to the extreme amount of hunting pressure in Southeast Texas. The other commenter stated that the quality of hunting should take precedence over the frequency of hunting. The department disagrees with the comments and responds that there is no data to suggest that hunting pressure is resulting in population declines, and that commission policy is to provide the greatest amount of opportunity possible. No changes were made as a result of the comments.

One commenter requested that the youth season be moved to October 16-17. The department disagrees with the comment and responds that the youth hunt has been placed at the end of October in order to take advantage of remnant early arrivals and later-arriving ducks. No changes were made as a result of the comments.

One commenter requested that the youth season be moved to November. The department disagrees with the comment and responds that the youth hunt has been placed at the end of October in order to take advantage of remnant early arrivals and later-arriving ducks. No changes were made as a result of the comment.

Two commenters commented in favor of adoption of the proposal to implement a reduced aggregate bag limit for ducks in exchange for season-long pintail and canvasback opportunity. The department responds that the aggregate bag limit is not allowable under existing federal frameworks. No changes were made as a result of the comments.

One commenter opposed a September opening date because of concerns about West Nile disease. The department, while sympathetic, does not possess the statutory authority to establish hunting seasons on the basis of public health concerns. No changes were made as a result of the comment.

One commenter stated that the preferred species don't migrate into the South Zone until late in the season. The department agrees with the commenter that late migrants are not present early in the season, but disagrees with the presumption that all hunters are interested in the same species. Many hunters prefer early arrivals, which is why the department has provided early-season opportunity. No changes were made as a result of the comment.

One commenter requested that the season open on October 16 and close on November 7, stating that otherwise the season is too long and the population cannot withstand the hunting pressure. The department disagrees with the comment and responds that there is no data to suggest that hunting pressure is resulting in population declines, and that curtailing the season as suggested is incompatible with the commission policy of providing the greatest amount of opportunity possible. No changes were made as a result of the comment.

Six commenters stated a preference for the latest season possible in the North Zone. The department agrees with the comment and notes that the season in the North Zone will run to the latest date allowable under the federal frameworks. No changes were made as a result of the comments.

One commenter stated that the youth-only season in the North Zone should take place November 13 and 14. The department disagrees with the comment and responds that the suggested dates would conflict with season dates adopted for the North Zone. The department prefers not to interrupt the season. No changes were made as a result of the comment.

One commenter stated that the North Zone season should be placed to allow hunters to take advantage of the Thanksgiving and Christmas vacation seasons. The department agrees with the comment and has made changes accordingly.

One commenter stated that the strategy of maximizing weekend hunting opportunities will only increase hunting pressure on the few places that hold ducks during the early part of the season. The department disagrees with the comment and responds that if there is plenty of water, the duck populations will be dispersed, if not, they will be concentrated. Maximizing weekend hunting is not believed to result in biological damage to the resource, but is believed to maximize hunter opportunity in accordance with commission policy. No changes were made as a result of the comment.

Five commenters stated opposition to any season structure in the North Zone that would cause a split season to open on the same day as deer season. The department disagrees with the comments and responds that hunter preference is for a split that occurs in late November or early December. No changes were made as a result of the comments.

One commenter requested that snow geese be taken from October 1 to January 31 and then open the conservation season. The department disagrees with the comment and responds that light geese typically arrive in the state in late October. No changes were made as a result of the comment.

One commenter requested that the goose season run from November 6 to February 8 to give more opportunity within the duck season. The department disagrees with the comment and responds that the seasons as adopted contain the maximum overlap with duck seasons. No changes were made as a result of the comment.

One commenter requested that the conservation season start no later than January 19. The department disagrees with the comment and responds that to effect this change, days would have to be taken from the goose season or the goose season would have to open prior to the arrival of huntable populations in peak-harvest counties. No changes were made as a result of the comment.

One commenter requested that the conservation season begin earlier than January 31. The department disagrees with the comment and responds that every effort has been made to provide maximum opportunity for goose hunting prior to the conservation season.

One commenter stated that the conservation season works only if duck season in both the north and south zones opens

no sooner than November 6. The commenter also stated that having duck season open before goose season is not good. The department disagrees with the comment and responds that the timing of duck seasons has little if any influence on goose harvest or season structure. No changes were made as a result of the comment.

One commenter stated that the goose season should be concurrent with the South Zone duck season. The department disagrees with the comment and responds that under the federal frameworks, the department is permitted 86 days of goose opportunity in the East Zone, but only 74 days of duck opportunity. Therefore, making goose season concurrent with South Zone duck season would result in reduced hunting opportunity, which is contrary to commission policy. No changes were made as a result of the comment.

One commenter requested that the restricted season for pintail and canvasbacks be placed at the beginning of the duck season. The department disagrees and responds that hunter preference is for the restricted season to take place as late in the duck season as possible. No changes were made as a result of the comment.

One commenter opposed adoption of the seasons for sandhill crane and requested that crane season be closed in Galveston County. The commenter stated that it was barbaric to allow cranes to be hunted. The department disagrees with the comment and responds that the regulations regarding sandhill cranes adopted by the Texas Parks and Wildlife Commission, with the approval of the U.S. Fish and Wildlife Service, carefully contemplate the protection, conservation, and management of the species. The population is closely monitored through aerial surveys on the Platte River during spring migration. This survey indicates stable population trends over the most recent 10-year period; therefore, the department maintains that implementation of an open season is biologically defensible and consistent with the commission's policy to provide the maximum possible hunter opportunity. No changes were made as a result of the comment.

The department received three comments supporting adoption of the proposed North Zone season.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one canvasback, one pintail, two redheads, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser. Canvasback and pintail may be taken only during the restricted seasons provided for those species.

(A) High Plains Mallard Management Unit: September 27-October 4, 2004, and October 30-January 25, 2005. The open season for pintail and canvasback begins December 18, 2004 and runs through January 25, 2005.

(B) North Zone: November 6-28, 2004 and December 11-January 30, 2005. The open season for pintail and canvasback begins December 23, 2004 and runs through January 30, 2005.

(C) South Zone: September 27-October 3, 2004, and November 13, 2004-January 18, 2005. The open season for pintail and canvasback begins December 11, 2004 and runs through January 18, 2005.

(2) Geese.

(A) Western Zone.

(i) Light geese: October 30, 2004-February 1, 2005. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 30, 2004-February 1, 2005. The daily bag limit for dark geese is four, which may not include more than three Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 6, 2004-January 30, 2005. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 6, 2004-January 30, 2005. The daily bag limit for dark geese is five, no more than three of which may be Canada geese and no more than two of which may be two white-fronted geese.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 6, 2004 - February 1, 2005. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 27, 2004 - February 1, 2005. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 18, 2004 - January 16, 2005. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section, except that pintail ducks and canvasback ducks may be taken. The bag limit for pintail ducks is one per day and the bag limit for canvasback ducks is one per day. The possession limit is two. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 23-24, 2004;

(B) North Zone: October 30-31, 2004; and

(C) South Zone: October 30-31, 2004.

§65.320. Extended Falconry Season--Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 31- February 21, 2005;

(C) South Duck Zone: January 19-February 9, 2005.

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1)-(3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. In addition to the means and methods authorized in §65.310(a) of this title (relating to Means , Methods, and Special Requirements), the following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document from the person who killed the birds. The wildlife resource document is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The wildlife resource document shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 31, 2005 through March 27, 2005, the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species)

(B) From February 2-March 27, 2005, the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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 September 7, 2004.

TRD-200405572
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: September 27, 2004
Proposal publication date: June 4, 2004
For further information, please call: (512) 389-4775

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39

The Comptroller of Public Accounts adopts new §5.39, concerning hazardous duty pay, without changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7279).

Subsection (a) of the new section defines important terms used throughout the section.

Subsection (b) of the new section provides important provisions about the receipt of hazardous duty pay.

Subsection (b)(1) governs only individuals who are not employed by the Texas Youth Commission (TYC). Subsection (b)(1)(B) states that hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in Government Code, §659.302(a), unless the individual is a "type 2 grandfathered employee" as described in subsection (g). Subsection (b)(1)(C) states that an individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay entitlement for that month. Subsection (b)(1)(D) states that for purposes of Government Code, §659.302(a)(2), 12 months of lifetime service credit are not required to be 12 continuous months.

Subsection (b)(2) governs only individuals who are employed by TYC. Subsection (b)(2)(B) specifies when TYC may include hazardous duty pay in the compensation paid to an individual. Subsection (b)(2)(C) prohibits TYC from paying hazardous duty pay to an individual who does not satisfy both of the criteria in subsection (b)(2)(B). Subsection (b)(2)(D) states that an individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay entitlement for that month. Subsection (b)(2)(E) states that for purposes of subsection (b)(2)(B)(ii), 12 months of lifetime service credit are not required to be 12 continuous months.

Subsection (c) of the new section provides important provisions about the amount of hazardous duty pay.

Subsection (c)(1) governs only individuals who are employed by TYC. The amount of hazardous duty pay paid monthly to a

full-time state employee must be expressed in terms of a specific dollar amount for each 12 month period. The amount of hazardous duty pay may exceed neither $7 for each 12 month period of lifetime service credit nor $210.

Subsection (c)(2) governs only part-time state employees. The amount of hazardous duty pay for a part-time state employee must be determined according to the formula specified in the subsection.

Subsection (c)(3) governs only hourly employees. The amount of hazardous duty pay for an hourly state employee must be determined according to the formula specified in the subsection.

Subsection (d) of the new section provides important provisions about the timing for payment of hazardous duty pay for employees paid once each month, twice each month, and every two weeks.

Subsection (e) of the new section provides important provisions about lifetime service credit. Subsection (e)(1) states that an individual accrues lifetime service credit for the period the individual holds a hazardous duty position. Subsection (e)(2) states that the amount of an individual's lifetime service credit at any particular time is equal to the number of months that have elapsed since the individual's effective service date. Subsection (e)(3) specifies how to determine an individual's effective service date. Subsection (e)(4) states that for purposes of determining an individual's effective service date, an individual's transfer from one state agency to another does not interrupt continuity of employment if no workdays occur between the two employments.

Subsection (f) of the new section provides important exceptions for "type 1 grandfathered employees." Those exceptions relate to state service credit calculations and the amount of hazardous duty pay that those employees may or are entitled to receive.

Subsection (g) of the new section provides important exceptions for "type 2 grandfathered employees." Those exceptions relate to certain personnel of the Parks and Wildlife Department, the Texas Department of Criminal Justice, and the Texas Alcoholic Beverage Commission.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L. Subchapter L governs hazardous duty pay.

The new section implements Government Code, Chapter 659, Subchapter L.

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 September 8, 2004.

TRD-200405577
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 28, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 475-0387

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34 TAC §5.40

The comptroller of public accounts adopts new §5.40, concerning overpayments and underpayments of compensation, without changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7283).

Subsection (a) of the new section defines important terms used throughout the section.

Subsection (b) governs the recovery of an overpayment of compensation. Subsection (b)(1) defines important terms used only in Subsection (b). Subsection (b)(2) specifies the circumstances under which the comptroller or a state agency has the exclusive authority to recover an overpayment of compensation. Subsection (b)(3) lists the general preconditions that must be satisfied before the comptroller may recover an overpayment of compensation. Subsection (b)(4) specifies the advance notice that must be provided before an overpayment of compensation may be recovered. Subsection (b)(5) states which hourly rate must be used when calculating the recovery of an overpayment of compensation. Subsection (b)(6) describes the effect of the recovery of an overpayment of compensation on the amounts that were deducted when the compensation was paid. Subsection (b)(7) states that a payroll deduction to recover an overpayment of compensation may be made from any payment of compensation and may be made more often than once monthly. Subsection (b)(8) provides requirements for when the amount of a state employee's compensation is insufficient to support a payroll deduction to recover an overpayment of compensation. Subsection (b)(9) provides requirements for when the amount of a state employee's base salary or wages is insufficient to support a reduction in those salary or wages to recover an overpayment of compensation. Subsection (b)(10) requires a state agency to reimburse the appropriate account or fund in the state treasury whenever the agency recovers an overpayment of compensation. Subsection (b)(11) requires a state agency to adjust all relevant payroll accumulators whenever the agency recovers an overpayment of compensation. Subsection (b)(12) states that the process for recovering an overpayment of compensation as described in subsection (b) may not continue after a state employee transfers from one state agency to another.

Subsection (c) governs the correction of underpayments of compensation. Subsection (c)(1) defines important terms used only in subsection (c). Subsection (c)(2) requires each state agency to have quality control measures that detect any underpayment of compensation to a state employee. Subsection (c)(3) specifies the deadline for a state agency to correct an underpayment of compensation. Subsection (c)(4) states which hourly rate must be used when calculating the correction of an underpayment of compensation. Subsection (c)(5) requires a state agency to adjust all relevant payroll accumulators whenever the agency corrects an underpayment of compensation

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, §666.008, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 666. Chapter 666 governs the recovery of an overpayment of compensation to a state employee.

The new section is also adopted under Government Code, §659.006, which requires the comptroller by rule to prescribe procedures for state agencies to follow in making adjustments

to payrolls following the period in which an underpayment of compensation occurs.

The new section implements Government Code, §659.006, and Government Code, Chapter 666.

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 September 8, 2004.

TRD-200405578
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 28, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 475-0387

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) adopts 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 without changes to the text as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7056).

The amendments are needed to update the plan rules, to clarify plan requirements, and to comply with federal law and administrative requirements.

Section 87.1 changes certain definitions due to changes in federal regulations affecting the plan. Additionally, 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.

In sections 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" have been deleted and replaced with the terms "prior plan vendor" and "revised plan vendor" where appropriate. These changes are needed to distinguish those remaining 457 vendors that continue to maintain "frozen" accounts in the plan from vendors offering products under the current 457 plan.

Sections 87.3 and 87.5 are amended to adjust the annual deferral limit to $13,000 for 2004, in conformance with the increased limit allowed by IRS Notice 2003-73. IRS Notice 2003-73 announced new plan limitations effective for 2004.

Section 87.5(b) is amended to clarify enrollment in the plan and the default investment selection. This clarification specifies that if a plan participant does not select an investment option, the plan administrator may direct those funds to a default investment option. This clarification provides direction so that it is clear how an account will be invested in all circumstances.

Sections 87.5(g) and 87.33 are amended to adjust the over age 50 catch-up limits to $3,000 for 2004, in conformance with the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16.

Section 87.5(m)(2) is amended to clarify the resumption of deferrals after a separation from service. This clarification specifies that a participant that terminates employment and is later re-employed must re-enroll in the plan before deferrals can be resumed. Re-enrollment will verify that the plan has all of the information that it needs regarding the participant and his or her intended deferrals.

Sections 87.7(b) and 87.7(d)(5) are eliminated because no new vendors are accepted in the prior plan. These sections describe certain procedures related to the approval process for new vendors in the prior plan. The provisions are therefore no longer necessary.

Section 87.7(m) is amended to clarify the rules relating to audits of prior plan and revised plan vendors. This amendment specifies that the plan administrator may audit current or former prior plan vendors. This ability to audit is important to the effective administration of the plan and is consistent with the intent of Texas Government Code Section 609.505(b).

Section 87.9(c) is amended to add the stable value account and the self-directed brokerage account as approved investment products. The additional investment products benefit participants by giving them choices for their retirement accounts.

Section 87.11 is amended to substitute "investment provider or TPA" for "prior or revised plan vendor " for clarification. This section describes the rules relating to advertising by vendors. 87.11(d) and (e) regarding solicitation are eliminated. Prior plan vendors are no longer permitted to solicit new business. Therefore, the eliminated provisions are no longer needed.

Section 87.13(a) and 87.13(c) are amended to require prior plan vendors to complete the annual disclosure form on each investment product for which a participant has an account balance. This change also clarifies the requirement that prior plan vendors must disclose any fees or penalties and their scheduled expiration date. This change and clarification will provide useful information to the plan administrator and is consistent with Texas Government Code Section 609.505.

Section 87.15(d)(A) is amended to allow a post-severance plan-to-plan transfer to another eligible governmental plan, in conformance with federal law. This amendment authorizes a terminated employee to transfer his/her account balance to another governmental plan. This change is intended to provide flexibility to participants regarding their retirement accounts.

Sections 87.15(e) (A)-(F) are eliminated. These provisions describe the procedures for making a partial transfer from the prior plan vendor. Participants are no longer permitted to make partial transfers from the prior plan. Participants must transfer 100% of their balance from the prior plan. Therefore, these provisions are no longer needed.

Section 87.17(u) removes the option for participants to annuitize prior plan investment products on or after October 1, 2004. Certain prior plan investment options allow retiring or terminating

participants to elect periodic distributions. The option to annuitize will no longer be permitted in the prior plan. Participants with balances in the prior plan will be permitted to take a lump sum distribution or roll over their account balances to an IRA. Participants with balances in the revised plan may elect periodic distributions, annuitize their account, take a lump sum distribution or roll over their account balances to an IRA. These changes will facilitate the administration of the plan by the plan administrator.

Section 87.19(d) is amended to provide that prior plan vendors must remit any fees assessed by the plan administrator on a quarterly basis with their regular quarterly report. Effective October 1, 2004, the plan administrator will implement an asset-based fee on prior plan vendors. This fee will be used to offset the plan administrator's costs to administer the plan. This amendment specifies that these fees must be submitted on a quarterly basis with the prior plan vendor's regular quarterly report. This fee is consistent with the provisions of Texas Government Code Section 609.505(d).

Section 87.21 is amended to clarify the plan administrator's ability to terminate, suspend or expel prior plan vendors to ensure compliance with Board Rules. This amendment specifies the conditions for which the plan administrator may take disciplinary actions against a prior plan vendor. A prior plan vendor's failure to submit assessed fees is added as grounds for disciplinary action. This clarification is consistent with Texas Government Code Section 609.505, especially subsections (a) and (d) thereof.

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. This change will improve the plan administrator's ability to administer the plan and is consistent with Texas Government Code Section 609.505.

Section 87.31(e) is added to give the plan administrator the authority to audit the revised plan vendors. The ability to audit is important to the effective administration of the plan and is consistent with the intent of Texas Government Code Section 609.505(b).

Section 87.33(g)(2) is amended to clarify the purchase of service credit within the same state or another state. It permits participants to use their account balance to purchase service credit. This change will provide flexibility to participants regarding their retirement accounts.

Section 87.34(b) is amended to allow for payment of independent investment advice from the revised plan. Effective September 1, 2004, participants will be permitted to use their account balances in the revised plan to pay for individual investment advice. This amendment authorizes such payments as appropriate plan expenses of the plan.

ERS received no comments regarding the amended sections.

The amendments are adopted 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.

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 September 10, 2004.

TRD-200405634
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: September 30, 2004
Proposal publication date: July 23, 2004
For further information, please call: (512) 867-7125

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Texas Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.111, 700.402, 700.410, 700.511, 700.512, 700.514, without changes to the proposed text published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7289).

When an abuse or neglect report is assigned for investigation, Child Protective Services (CPS) is sometimes unable to complete the investigation because the family cannot be located at all, moves after contact with DFPS to avoid the investigation, or otherwise fails to cooperate in the investigation. To ensure that staff can better identify cases in which there may be a history of moving to avoid investigation or other failure to cooperate with the investigation, CPS identified certain changes that could be made to the disposition and closure codes assigned to a case in the DFPS database. Current codes are described in agency rules. The justification for the amendments is to establish new codes that will provide an indicator in cases so that, if these same families are ever the subject of a subsequent report of alleged abuse or neglect, CPS staff can make immediate (i.e., Priority 1 response) and special efforts to locate and engage families in the subsequent investigation.

The amendments will function by ensuring that children will be better protected from abuse or neglect in circumstances where families in a prior investigation could not be located to begin or finish the investigation, or the families are unwilling to cooperate with CPS in the investigation.

No comments were received regarding adoption of the amendments.

SUBCHAPTER A. ADMINISTRATION

40 TAC §700.111

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by

the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Texas Family Code, §261.301(d).

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 September 10, 2004.

TRD-200405630
Gerry Williams
Acting General Counsel
Department of Family and Protective Services
Effective date: October 1, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 438-3437

SUBCHAPTER D. SCHOOL INVESTIGATIONS

40 TAC §700.402, §700.410

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Texas Family Code, §261.301(d).

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 September 10, 2004.

TRD-200405631
Gerry Williams
Acting General Counsel
Department of Family and Protective Services
Effective date: October 1, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 438-3437

SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

40 TAC §§700.511, 700.512, 700.514

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Texas Family Code, §261.301(d).

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 September 10, 2004.

TRD-200405632
Gerry Williams
Acting General Counsel
Department of Family and Protective Services
Effective date: October 1, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 438-3437

CHAPTER 745. LICENSING
SUBCHAPTER L. REMEDIAL ACTIONS
DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

40 TAC §745.8605

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.8605, without changes to the proposed text published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7292).

The justification for the amendment is to add falsification of records or materials as a reason to impose remedial action against the permit holder of a child-care operation.

The amendment will function by enhancing the protection of children because of Licensing's ability to take remedial action against a permit holder who falsifies records or materials required for Licensing purposes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council

shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs; HRC, Chapter 42, Subchapter D, which authorizes the Department to impose a variety of remedies against a permit holder; and HRC §42.002 gives the Department primary responsibility for regulating child-care operations.

The amendment implements the Human Resources Code, §42.002.

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 September 10, 2004.

TRD-200405629
Gerry Williams
Acting General Counsel
Department of Family and Protective Services
Effective date: October 1, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 438-3437

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2003 and 2004 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0904-15-I), was filed on September 8, 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 2003 and 2004 model vehicles.

A copy of the petition, including a 66-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-0904-15-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on October 25, 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-200405608
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 9, 2004

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance will consider a petition by the staff of the Texas Department of Insurance to amend the Texas Private Passenger Automobile Statistical Plan (Stat Plan) - Quarterly Market Report (QMR). Proposed changes are necessary to implement reporting of Group 2 vehicle experience in order for TAIPA to have more complete and accurate information for assignment quota and assessment purposes. Group 2 "other private passenger automobile business" vehicles are subject to assignment through the Texas Automobile Insurance Plan Association (TAIPA) in the same fashion as Group 1 "regular private passenger automobiles". However, no complete data on the numbers of Group 2 vehicles insured are collected by the QMR or by any other report required by the Stat Plan. Staff's petition (Ref. A-0904-16-I) was filed on September 14, 2004.

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 as defined herein.

Staff proposes amendments to the Stat Plan as follows:

Quarterly Market Report:

•amend and add codes under Section 4 - Experience To Be Reported to include Group 2 vehicles.

•amend and add codes under Section 7 - Policy and Membership Fees to include Group 2 vehicles.

•amend Section 13 - Summary Reporting by Driver Class to not be limited to Group 1 vehicles.

•amend and add codes under Numeric Field 15 of the Record Layout and Field Definitions to include Group 2 vehicles.

•amend and add codes under Numeric Field 40-48 of the Record Layout and Field Definitions to include Group 2 vehicles.

Staff requests that the proposed amendments be mandatory effective with the first quarter 2005 statistical plan reporting requirements.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code Article 5.96 and §38.204 and §38.207.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. A-0904-16-I).

Comments on the proposed amendments must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P. O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to C.H. Mah, Senior Associate Commissioner for Property & Casualty, P. O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, ch. 2001).

TRD-200405674
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 14, 2004

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas 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 59. PARKS

Subchapter A. Park Entrance and Park User Fees

§59.1. General Statement.

§59.2. Park Entrance and Use Fees.

§59.3. Activity and Facility Use Fees.

§59.4. Reservation of State Park Facilities.

Subchapter B. Local Park Planning Assistance

§59.10. Eligibility.

§59.11. Limitations.

§59.12. Application for Assistance.

Subchapter C. Acquisition and Development of Historic Sites, Buildings and Structures

§59.41. General Statement.

§59.42. Chronology and Thematic Organization.

§59.43. Acquisition Guidelines.

§59.44. Development Guidelines.

§59.45. Methods of Additional Funding Other Than Departmental.

§59.46. Maintenance Guidelines.

§59.47. Personnel Selection and Training Guidelines.

Subchapter D. Administration of the State Park System

§59.61. General Objectives.

§59.62. Parks and Wildlife Land Classification-Policy.

§59.63. Definitions.

§59.64. Classification and Guidelines.

§59.75. Coastal Management Program.

Subchapter E. Operation and Leasing of Park Concessions

§59.101. Definitions.

§59.102. General Requirements for Park Concessions.

§59.103. Selection of a Concessioner.

§59.104. Types of Concession Contracts.

§59.105. Contract Terms.

§59.106. Franchise Fee Rates and Charges.

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§59.108. Bond and Insurance.

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Subchapter F. State Park Operational Rules.

§59.131. Definitions.

§59.132. General Rules.

§59.133. Closing Hours and Overnight Use.

§59.134. Rules of Conduct in Parks.

§59.135. Vehicles, Trailers, Motor Homes, Camping Equipment, or Personal Belongings.

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Subchapter G. Relocation Assistance in Park Acquisition Projects.

§59.191. Definitions.

§59.192. Purpose.

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Subchapter H. Sea Rim State Park Hunting, Fishing, and Trapping Proclamation

§59.201. Application.

§59.202. Authority.

§59.203. Finding of Fact.

§59.204. Consent.

§59.205. Definitions.

§59.206. Means and Methods: Migratory Birds.

§59.207. Means and Methods: Fur-Bearing Animals.

§59.208. Hunting from Vehicle.

§59.209. Hunting Permits.

§59.210. Checking Game.

§59.211. Open Seasons and Bag Limits: Migratory Birds.

§59.212. Open Seasons and Bag Limits: Fur-Bearing Animals.

§59.213. Fish: Means and Methods; Open Seasons; Bag and Size Limits.

§59.214. General.

§59.215. Effective Date.

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. Consideration of the publication of amendments or repeals resulting from this rules review is scheduled for the Parks and Wildlife Commission on November 3, 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-200405697
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: September 15, 2004

The Texas Parks and Wildlife Department files this notice of intention to review Texas Administrative Code Title 31, Part 2, as follows:

Chapter 69. Resource Protection

Subchapter A. Endangered, Threatened, and Protected Native Plants

§69.1. Permit Required.

§69.2. Scientific Plant Permit.

§69.3. Reporting Requirements.

§69.4. Renewal.

§69.5. Commercial Plant Permit.

§69.6. Permit and Tag Fees.

§69.7. Period of Validity.

§69.8. Endangered and Threatened Plants.

§69.9. Penalties.

Subchapter B. Fish and Wildlife Values

§69.19. Restitution and Restoration.

§69.20. Application.

§69.21. Definitions.

§69.22. Wildlife--Recovery Values.

§69.23. Endangered and Threatened Species.

§69.24. Basic Value.

§69.25. Aquatic Life--Recovery Value.

§69.26. Commercial Species--Recovery Value.

§69.27. Updating Existing Recovery Values.

§69.28. Savings Clause.

§69.29. Computed Values for Selected Species.

§69.30. Trophy Wildlife Species.

Subchapter C. Wildlife Rehabilitation Permits

§69.43. Definitions.

§69.44. General Provisions.

§69.45. Permit Required.

§69.46. Application for Permit.

§69.47. Qualifications.

§69.48. Permit Renewals.

§69.49. General Facilities Standards.

§69.50. Transfers.

§69.51. Release of Rehabilitated Wildlife.

§69.52. Reports.

§69.53. Violations and Penalties.

Subchapter D. Memorandum of Understanding

§69.71. Memorandum of Understanding.

Subchapter E. Natural Resource Damages

§69.73. Natural Resource Damage Assessment for Coastal Oil Spills.

Subchapter F. Health Certification of Native Shellfish

§69.75. Definitions.

§69.77. Health Certification of Native Penaeid Shrimp.

Subchapter G. Compliance With Coastal Management Plan

§69.91. Consistency.

§69.93. Thresholds for Referral.

Subchapter H. Issuance of Marl, Sand and Gravel Permits

§69.101. Management and Protection.

§69.102. Definitions.

§69.103. Delegation of Authority.

§69.104. Permit Required.

§69.105. Application Procedures: Individual Permit.

§69.106. Public Comment Hearing Procedures.

§69.107. Contested Case Hearings.

§69.108. Criteria.

§69.109. Findings of Fact.

§69.110. Period of Validity.

§69.111. Requirements.

§69.112. Restrictions.

§69.113. Claims of Private Ownership.

§69.114. Sedimentary Material Permit Application Fees.

§69.115. General Permits.

§69.116. Conditions.

§69.117. Notification and Reporting for General Permits.

§69.118. Best Management Practices.

§69.119. Fees.

§69.120. Exemptions.

§69.121. Prices.

Subchapter I. Shell Dredging on the Texas Gulf Coast

§69.201. Contents.

§69.202. Previous Shell Dredging Orders.

§69.203. Definitions.

§69.204. Permit Applications.

§69.205. Department Requirements.

§69.206. Violations.

§69.207. Administrative Action and Penalties.

§69.208. Renewal of Permits.

§69.209. Existing Permits.

Subchapter J. Scientific, Educational and Zoological Permits

§69.301. Definitions.

§69.302. General Rules.

§69.303. Application for Permit.

§69.304. Qualifications.

§69.305. Facility Standards.

§69.306. Restrictions.

§69.307. Final Disposition of Specimens.

§69.308. Reports.

§69.309. Inspections.

§69.310. Fees.

§69.311. Violations and Penalties.

Subchapter K. Sale of Nongame Species

§69.401. Applicability.

§69.402. Definitions.

§69.403. Permit Required.

§69.404. Permit Application, Issuance, and Fees.

§69.405. Permit Renewal.

§69.406. Reports.

§69.407. Disposition of Stock.

§69.408. Violations and Penalties.

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 reflects current legal, policy, and procedural considerations. Consideration of publication of amendments or repeals resulting from this rules review is scheduled for the Parks and Wildlife Commission on November 3, 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 of the Commission.

TRD-200405698
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: September 15, 2004

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 2, 2004, through September 9, 2004. The public comment period for these projects will close at 5:00 p.m. on October 15, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Pelpro, LLC; Location: The project is located north of Farm-to-Market Road 2925, immediately west of Arroyo City Boulevard, and west of Arroyo City, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Leona, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 653000; Northing: 2913000. Project Description: The applicant proposes to develop a 223-acre tract for mixed-use residential and commercial property adjacent to the Arroyo Colorado. This development would include the excavation of several residential canals that would vary in width from 90 to 100 feet and have a depth of - 5.5 feet Mean Low Tide (MLT). Two of the canals would connect to and extend into the Arroyo Colorado at depths of -5.5 feet MLT. Approximately 0.27 acre of the Arroyo Colorado would be dredged for the proposed connections, with approximately 1,330 cubic yards of material to be removed and used onsite during construction.

All dredging would be done either mechanically or hydraulically, with the dredging equipment either waterbased (barge) or working from adjacent land areas depending on the construction location. No areas to be used for the placement of future maintenance dredging have been designated by the applicant. Concrete bulkheads would be installed along the banks of the proposed canals. The bulkheads would either be poured in place or fabricated on uplands and then driven into place. A proposed boat ramp would be constructed within an area designated as a park (Area G). Seven 24-inch-diameter culverts would be installed at each of the roadway canal crossings. The excavation of the canals and boat ramp, and installation of culverts and bulkheads, would be done prior to the excavation of the opening of the mouth of the two canals at the Arroyo Colorado. No boat docks, piers or bulkheads would be constructed on the Arroyo Colorado, and no boat docks or piers would be constructed in association with this permit on the proposed canals. Individual landowners would be responsible for obtaining separate authorization.

Approximately 6.86 acres of wetlands on the property would be excavated to form portions of some of the canals, with an additional 6.76 acres of wetlands to be filled by the proposed work. The applicant proposes to enhance the remaining 9.4 acres of wetlands by grading the area to an appropriate wetland elevation, relative to the water level of the adjacent canals, and planting appropriate hydrophytic vegetation. Approximately 3.8 acres of the wetlands would be excavated to form a shallow lagoon (-1 foot MLT). A small upland brush community is also proposed for the purpose of habitat diversity. The enhanced wetland area would be designed to offer habitat to shorebirds, wading birds, waterfowl and migratory songbirds. CCC Project No.: 04-0291-F1; Type of Application: U.S.A.C.E. permit application #22870 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: The project is located on State Highway (SH) 48 from its intersection with SH 100 to the Port of Brownsville Ship Channel. The project can be located on the U.S.G.S. quadrangle maps entitled: Palmito Hill, TX, Laguna Vista, TX and Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 677322 (POB) & 677062 (POE); Northing: 2884857 (POB) & 2874873 (POE). Project Description: The project consists of the widening of 9.7 miles of SH 48 from 2 lanes to 4 lanes. The existing highway consists of two 12-foot-wide main lanes, two 8-foot-wide shoulders and a 4-foot-wide median. The proposed highway consists of four 12-foot-wide main lanes, two 10-foot-wide shoulders, and a median that varies from 11 feet to 24 feet depending on the location. Also included are the replacement of the San Martin Lake bridge, the replacement of a 48-inch by 103-inch culvert with a 284-foot-long bridge at Bahia Grande, and the installation of an ocelot crossing. The basic purpose of the project is to improve traffic safety for traffic when used as a designated Hurricane Evacuation Route and also a projected increase in traffic attributed to growth. The proposed widening will result in the filling of approximately 14.22 acres of coastal wetlands and mudflats, and the loss of 0.3 acres of oyster habitat attributed to the bridge replacement at the San Martin Lake crossing. As mitigation, the applicant proposes to install a 284-foot-long bridge at the location of a future tidal channel to be excavated by the Brownsville Navigation District. The tidal channel will connect the Brownsville Ship Channel with Bahia Grande, but it is not part of this application. CCC Project No.: 04-0292-F1; Type of Application: U.S.A.C.E. permit application #23398 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Ballard Exploration Company, Inc.; Location: The project is located in Sabine Lake, at a site located approximately 4 miles northeast of the Martin Luther King Bridge to Pleasure Island, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur North, Texas. Approximate UTM Coordinates: Zone 15; Easting: 414456; Northing:

3305356. Project Description: The applicant proposes to drill and produce the MF 102080 Well No. 001. This activity consists of 8 temporary 3-pile clusters that will be used during drilling operations. These 3-pile clusters will be removed when the permanent well guard is installed. The well guard will consist of a 16-foot by 7-foot timber structure supported by 6 pilings. The depth of the lake below the well guard is 8 feet. The well guard platform will be approximately 4 feet above the water. There will be no dredging or fill material associated with the proposed project. CCC Project No.: 04-0288-F1; Type of Application: U.S.A.C.E. permit application #23523 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 Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Ballard Exploration Company, Inc.; Location: The project is located in the Old San Jacinto River, at a site northwest of Baytown, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299820; Northing: 3297079. Project Description: The applicant proposes to drill and produce the MF 103382 Well No. 001. This activity consists of 8 temporary 3-pile clusters that will be used during drilling operations. These 3-pile clusters will be removed when the permanent well guard is installed. The well guard will consist of a 16-foot by 7-foot timber structure supported by 6 pilings. The depth of the river below the well guard is 8 feet. The well guard platform will be approximately 4 feet above the water. There will be no dredging or fill material associated with the proposed project. CCC Project No.: 04-0287-F1; Type of Application: U.S.A.C.E. permit application #23522 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 Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action 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-200405678
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 15, 2004

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Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 167h (RFQ) related to these contract awards was published in the February 6, 2004, issue of the *Texas Register* (29 TexReg 1238).

The contractors will provide Professional Contract Examination Services as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that one final contract was awarded as of September 3, 2004 as follows:

A contract is awarded to T-Cot, Inc. Examinations will be assigned in $22,500, $60,000 or $75,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term or any extension thereof. The term of the contract is September 3, 2004 through August 31, 2005.

TRD-200405609
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 9, 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 09/20/04 - 09/26/04 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 09/20/04 - 09/26/04 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-200405666
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 14, 2004

♦ ♦ ♦

Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Baytown Teachers Credit Union (Baytown) seeking approval to merge with Community Resource Credit Union (Baytown) with the latter being the surviving credit union.

An application was received from East Texas Professional Credit Union (Longview) seeking approval to merge with DARCO Employees Federal Credit Union (Marshall) with East Texas Professional Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a

request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200405685
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2004

Applications to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from Telco Plus Credit Union, Longview, Texas. The credit union is proposing to change its name to Peoples Choice Credit Union.

An application for a name change was received from Aldine Teachers Credit Union, Houston, Texas. The credit union is proposing to change its name to InvesTex Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200405686
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2004

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Community Service Credit Union, Huntsville, Texas to expand its field of membership. The proposal would permit persons who reside, work, attend school or worship in Walker County, Texas, to be eligible for membership in the credit union.

An application was received from LCRA Credit Union, Austin, Texas (#2) to expand its field of membership. The proposal would permit contract employees provided by Kelly Services of Austin who are assigned permanently or temporarily to any affiliated of the Lower Colorado River Authority, to be eligible for membership in the credit union.

An application was received from LCRA Credit Union, Austin, Texas (#3) to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in and businesses located in Travis County, Texas, to be eligible for membership in the credit union.

An application was received from LCRA Credit Union, Austin, Texas (#4) to expand its field of membership. The proposal would remove exclusionary language relating to employees and board members and/or city council members of the Wholesale Customers of the Lower Colorado River Authority, which currently protects the field of membership of certain occupation-based credit unions.

An application was received from LCRA Credit Union, Austin, Texas (#6) to expand its field of membership. The proposal would permit employees of subsidiaries and affiliates, owned or operated by LCRA and paid from Austin, Texas, to be eligible for membership in the credit union.

An application was received from Texas Telcom Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit persons who live in, work in, attend school in, or worship in and businesses located in Dallas County, Texas, to be eligible for membership in the credit union.

An application was received from GPS Community Credit Union, Galena Park, Texas (#1) to expand its field of membership. The proposal would permit persons who worship or attend school in and businesses in Galena Park Independent School District to be eligible for membership in the credit union and removes exclusionary language relating to persons who live or work in Galena Park Independent School District, which currently protects the field of membership of certain credit unions in this area.

An application was received from GPS Community Credit Union, Galena Park, Texas (#2) to expand its field of membership. The proposal would permit persons who worship or attend school in and businesses in Sheldon Independent School District to be eligible for membership in the credit union and removes exclusionary language relating to persons who live or work in Sheldon Independent School District, which currently protects the field of membership of certain credit unions in this area.

An application was received from GPS Community Credit Union, Galena Park, Texas (#3) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses in Liberty County, Texas, to be eligible for membership in the credit union.

An application was received from GPS Community Credit Union, Galena Park, Texas (#4) to expand its field of membership. The proposal would remove the limitation on students enrolled in San Jacinto College North in Houston, Texas, to be eligible for membership in the credit union.

An application was received from GPS Community Credit Union, Galena Park, Texas (#5) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses within 10 miles of GPS Community Credit Union offices located at 1700 16th Street, Galena Park, Texas 77547; 771 Normandy, Houston, Texas 77015; 14340 Wallisville Road, Houston, Texas 77049; and Highway 2100, Crosby, Texas 77532, to be eligible for membership in the credit union.

An application was received from Memorial Hermann Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship, and businesses within a 10 mile radius of the following branches of Memorial Hermann Credit Union: 7777 Southwest Freeway #C10, Houston, TX 77074; 902 Frostwood #170, Houston, TX 77024; 9401 Southwest Freeway #120, Houston, TX 77074; 1635 North Loop West #S1-205, Houston, TX 77008, to be eligible for membership in the credit union.

An application was received from First Community Credit Union of Houston, Houston, Texas (#1) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses in Harris County, Texas, to be eligible for membership in the credit union.

An application was received from First Community Credit Union of Houston, Houston, Texas (#2) to expand its field of membership. The proposal would remove exclusionary language relating to persons who

work or reside in the community of Katy, which currently protects the field of membership of certain credit unions in this community.

An application was received from First Community Credit Union of Houston, Houston, Texas (#3) to expand its field of membership. The proposal would remove exclusionary language relating to persons who work or reside in the communities of Cy-Fair, Tomball, and Klein, which currently protects the field of membership of certain credit unions in these communities.

An application was received from First Community Credit Union of Houston, Houston, Texas (#4) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses in Waller County, Texas, to be eligible for membership in the credit union.

An application was received from First Community Credit Union of Houston, Houston, Texas (#5) to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in and businesses in Montgomery County, Texas, to be eligible for membership in the credit union.

An application was received from Star of Texas Credit Union, Austin, Texas to expand its field of membership. The proposal would permit individuals who live, work, attend school, or worship, and businesses within a 10-mile radius of the following branches of Star of Texas Credit Union: 114 E. Huntland Dr., Austin 78752; 101 E. 15th St., Austin 78701; 1117 Trinity St., Austin 78701, to be eligible for membership in the credit union.

An application was received from Lone Star Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit employees of Atmos Energy Corporation who work in or are paid from Dallas, Texas, to be eligible for membership in the credit union.

An application was received from Eastman Credit Union, Kingsport, Tennessee to expand the field of membership of its branch office located in Longview, Texas. The proposal would permit persons who live, work, worship, or attend school in and businesses and other legal entities located in the contiguous area of Gregg, Harrison and Upshur Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200405687
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2004

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership--Approved

Winkler County Credit Union, Houston, Texas--See *Texas Register* issued dated June 25, 2004.

Pegasus Credit Union, Dallas, Texas--See *Texas Register* issue dated June 25, 2004.

Application(s) to Amend Articles of Incorporation--Approved

Superior Credit Union, Brownwood, Texas--See *Texas Register* issue dated July 30, 2004.

TRD-200405677
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 15, 2004

Texas Commission on Environmental Quality

Notice of Update to the State Superfund Registry

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (the Act) to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987 issue of the *Texas Register* (12 TexReg 205). In accordance with the Act, §361.181, the commission must update the state Superfund registry annually to add new facilities in accordance with the Act, §361.184(a) and §361.188(a)(1) (see also 30 TAC §335.343) or to delete facilities in accordance with the Act, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.

2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

3. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

4. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

5. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

6. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

7. Texas American Oil. Located approximately three miles north of Midlothian on Old State Highway 67, Ellis County: waste oil recycling.

8. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

9. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

10. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

11. Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial waste management.

12. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

13. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

14. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

15. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

16. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

17. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

18. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

19. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

20. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

21. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

In accordance with the Act, §361.184(a), those facilities that may pose an imminent and substantial endangerment, and that have been proposed to the state Superfund registry, are set out in descending order of HRS scores as follows.

1. Kingsland. Located in the vicinity of the 2100 block of Farm-to-Market Road 1431 and in the vicinity of the 2400 block of Farm-to-Market Road 1431, in the community of Kingsland, Llano County: two groundwater plumes.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

4. Hicks Field Sewer Corp. Located approximately 1.8 miles west of the intersection of U.S. Highway 81 - 287 and Farm-to-Market Road 156, Tarrant County: former sewage treatment facility.

5. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

6. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

7. Phipps Plating. Located at 305 East Grayson Street, San Antonio, Bexar County: metal plating.

8. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

9. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

10. Voda Petroleum Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

11. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.

12. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

13. Harvey Industries, Inc. Located at the southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: television cabinets and circuit board manufacturing.

14. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

15. American Zinc. Located approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

16. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

17. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

18. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

19. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

20. Rogers Delinted Cottonseed Company. Located at the intersection of State Highway 380 and Farm-to-Market Road 547, approximately one mile east of Farmersville, Collin County: former cottonseed delinting processing facility.

21. McNabb Flying Service. Located 1.5 miles northwest of Alvin, approximately one mile east of State Highway 6, at the intersection of Brazoria County roads 146 and 539, Brazoria County: aerial pesticide applicator.

22. Poly-Cycle Industries, Jacksonville. Located on the south side of the city at 2505 South Jackson Street in Cherokee County: lead acid battery chips recycler and lead recovery.

Since the last Texas Register publication on March 26, 2004 (29 TexReg 3280), the TCEQ has determined that one facility, Crim-Hammett, Rusk County, no longer poses an imminent and substantial endangerment to public health and safety or the environment, and in accordance with the Act, §362.189 and 30 TAC §335.344, has been deleted. Also, the TECQ has determined that one site, J.C. Pennco Waste Oil Service, poses an imminent and substantial endangerment to public health and safety or the environment, and in accordance with the Act, §361.188, was moved from the proposed to the listed category of the state Superfund registry. No additional sites were proposed to the state Superfund registry.

To date, 36 sites have been deleted from the state registry in accordance with the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344): Avinger Development Company, Cass County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Crim-Hammett, Rusk County; Double R Plating Company, Cass County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Sampson Horrice, Dallas County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. Copying of file information is subject to payment of a fee.

TRD-200405662
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2004

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 25, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 25, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: A & J E H Inc.; DOCKET NUMBER: 2004-0879-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 21054, Regulated Entity Identification Number (RN) 102245008; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release from any part of the underground storage tank (UST) system; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Atofina Petrochemicals, Inc.; DOCKET NUMBER: 2004-0065-AIR-E; IDENTIFIER: Air Account Number JE-0005-H, RN10257520; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), Permit Numbers 9195A/PSD-TX-453M6 and 46396, and THSC, §382.085(b), by releasing unauthorized emissions from the north flare, by exceeding the sulfur recovery tail gas thermal oxidizer for sulfur dioxide and hydrogen sulfide, by exceeding the nitrogen oxides permit limit, by failing to submit two copies of the final test report, and by exceeding the Tank 926 flare for carbon monoxide; and 30 TAC §101.201(a)(1)(B) and (2)(H) and THSC, §382.085(b), by failing to properly report an emissions event; PENALTY: $27,020; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Babaji & Company, Inc. dba Phillips 66; DOCKET NUMBER: 2004-0174- PST-E; IDENTIFIER: PST Facility Identification Number 5506; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475, by failing to monitor USTs for releases, by failing to conduct a piping tightness test, and by failing to test a line leak detector for performance and operational reliability; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Buda; DOCKET NUMBER: 2004-0742-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1050012, RN100824846; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(3) and (4), and (f)(2), by failing to employ at least two Class C groundwater licensed operators and by failing to have copies of customer service inspection forms and a plant operation manual accessible for review; 30 TAC §290.110(c)(5)(B), by failing to conduct the chlorine residual monitoring; and 30 TAC §290.109(c)(2)(A), by failing to collect monthly bacteriological samples; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Burleson County Municipal Utility District 1; DOCKET NUMBER: 2004- 0657-PWS-E; IDENTIFIER: PWS Number 0260005, RN101397131; LOCATION: Somerville, Burleson County, Texas; TYPE OF FACILITY: public water supply; RULE

VIOLATED: 30 TAC §290.46(m)(1), by failing to conduct annual inspections of the pressure tank and ground storage tank; and 30 TAC §290.42(h) (now 30 TAC §290.42(i)) and the Code, §26.121(a), by failing to obtain a wastewater discharge permit; PENALTY: $320; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Campbell Concrete & Materials L.P.; DOCKET NUMBER: 2004-0558-AIR- E; IDENTIFIER: Air Account Number 907271R, RN100519560; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.115(b)(1) and (c), Air Permit Number 5382, and THSC, §382.085(b), by failing to maintain the permitted production rate of 100,000 cubic yards of concrete and by failing to submit production records; and 30 TAC §116.116(b)(1)(C) and THSC, §382.085(b), by failing to submit a permit amendment application; PENALTY: $4,160; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Cardenas Autoplex, Inc.; DOCKET NUMBER: 2004-0583-PST-E; IDENTIFIER: PST Facility Identification Number 60573, RN101685972; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: motor vehicle dealership; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide financial assurance; and 30 TAC §334.7(d)(3), by failing to file a notice of changes in the registration information with the agency; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Century Park Apartments Limited Partnership dba Century Park Apartments; DOCKET NUMBER: 2004-0782-EAQ-E; IDENTIFIER: RN104133079; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: apartment complex construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a water pollution abatement plan and organized sewage collection system plan; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758- 5336, (512) 339-2929.

(9) COMPANY: Chevron U.S.A., Inc.; DOCKET NUMBER: 2004-0790-AIR-E; IDENTIFIER: Air Account Number EE-0510-P, RN100213016; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: petroleum bulk station and terminal; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the Title V compliance certification; PENALTY: $1,720; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(10) COMPANY: Clean Harbors Deer Park, LP; DOCKET NUMBER: 2004-0621-IHW-E; IDENTIFIER: Industrial Hazardous Waste (IHW) Permit Number 50089; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: hazardous waste treatment, storage, and disposal; RULE VIOLATED: 30 TAC §305.69 and §305.125(8) and IHW Permit Number 50089, by failing to submit a permit modification request and obtain authorization; PENALTY: $10,200; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: David Everett dba Cooney Cavern Lodge; DOCKET NUMBER: 2004-0828- PWS-E; IDENTIFIER: PWS Number 0180040, RN102694197; LOCATION: Clifton, Bosque County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(B), (J), (L), and (O), and §290.42(e), by failing to provide a well casing, by failing to provide a concrete sealing block, by failing to install a well blow-off line, and by failing to provide an intruder-resistant fence; 30 TAC §290.45(b)(1)(A)(i), by failing to provide adequate well capacity; 30 TAC §290.46(f), by failing to maintain monthly operating records; PENALTY: $856; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Farida Karim dba Dan D Mart; DOCKET NUMBER: 2004-0664-PST-E; IDENTIFIER: PST Facility Identification Number 57595, RN102280369; LOCATION: near Justin, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for accidental leak releases; PENALTY: $2,840; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Tahir Iqbalkhan dba Dollar Saver; DOCKET NUMBER: 2003-1143-PST-E; IDENTIFIER: PST Facility Identification Number 69990; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.48(c), by failing to conduct inventory control and reconciliation; PENALTY: $7,200; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767- 3500; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(14) COMPANY: Charles Donaldson; DOCKET NUMBER: 2004-0264-PWS-E; IDENTIFIER: PWS Number 1012607, RN101232213; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(B), (K), and (O), and §290.43(e), by failing to make available upon request a sanitary control easement, by failing to provide a well casing 18 inches above the elevation of the finished floor of the pump house, by failing to properly screen the well casing vent, and by failing to secure the hypochlorinator solution containers and pumps; 30 TAC §290.110(b)(4), (c)(5)(A), and (d)(3), by failing to maintain a free chlorine residual concentration of 0.2 milligrams per liter, by failing to perform the chlorine residual tests, and by failing to possess a chlorine test kit; 30 TAC §290.46(m) and (v), by failing to maintain good housekeeping around the system's well and by failing to install all water system electrical wiring in a securely mounted conduit; 30 TAC §290.42(e)(5), by failing to house the hypochlorinator in an enclosed building; 30 TAC §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.43(d)(2), by failing to provide the pressure tank with an easily readable pressure gauge; PENALTY: $6,438; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Douglas Utility Company; DOCKET NUMBER: 2004-0783-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011200001, RN101608586; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), TPDES Permit Number WQ0011200001, and the Code, §26.121(a)(1), by failing to operate and maintain the facility to prevent the discharge and accumulation of sludge and by failing to maintain compliance with total suspended solids

(TSS) and carbonaceous biochemical oxygen demand (CBOD); 30 TAC §305.126(a) and TPDES Permit Number WQ0011200001, by failing to initiate engineering and financial planning; and 30 TAC §305.45(a)(8)(A), by failing to submit accurate information on the permit application; PENALTY: $6,080; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Enbridge Pipelines (Texas Gathering) Inc.; DOCKET NUMBER: 2004-0413- AIR-E; IDENTIFIER: Air Account Number HL-0076-C, RN100224872; LOCATION: Canadian, Hemphill County, Texas; TYPE OF FACILITY: gas processing; RULE VIOLATED: 30 TAC §116.115(a)(2)(G), Permit Number 26395, and THSC, §382.0216, by failing to comply with the permitted nitrogen oxides limit; PENALTY: $6,350; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Enbridge Pipelines (East Texas) L.P.; DOCKET NUMBER: 2004-0439-AIR- E; IDENTIFIER: Air Account Number FI-0082-A, RN100224914; LOCATION: Lanley, Freestone County, Texas; TYPE OF FACILITY: natural gas treating station; RULE VIOLATED: 30 TAC §122.146(1), Permit Number O-00411, and THSC, §382.085(b), by failing to submit the required annual compliance certification; PENALTY: $2,425; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: EOTT Energy Liquids, L.P.; DOCKET NUMBER: 2004-0904-AIR-E; IDENTIFIER: Air Account Number HG-0714-Q; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 20289, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,960; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Gaylord Willit dba Essman Warehouse Complex; DOCKET NUMBER: 2004- 0732-PWS-E; IDENTIFIER: PWS Number 1013096; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(B) and (3)(B), (J), (K), and (M) - (O), and 30 TAC §290.43(e), by failing to locate groundwater sources so there will be no danger of pollution from insanitary surroundings, by failing to provide a well casing, by failing to provide a concrete sealing block around the well, by failing to provide a well casing vent, by failing to provide a sampling tap on the well discharge line, by failing to install a flow meter, and by failing to provide intruder-resistant fencing or lockable housing; 30 TAC §290.46(m)(4) and (n)(1) - (3), by failing to maintain all distribution system lines, by failing to provide up-to-date "as-built" plans and specifications, by failing to provide an up-to-date map of the distribution system, and by failing to provide the well completion data; 30 TAC §290.121(a), by failing to provide an up-to-date monitoring plan; and 30 TAC §290.42(e)(5), by failing to provide secured housing for the hypochlorination solution containers and pumps; PENALTY: $1,103; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2004-0781-AIR- E; IDENTIFIER: Air Account Number CB-0038; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: synthetic organic chemicals and resins manufacturing; RULE VIOLATED: 30 TAC §§101.20(2), 113.100, and 116.115(b) and (c), 40 Code of Federal Regulations (CFR) Part 61, Subpart §61.12(c) and Part 63, Subpart §63.6(e), Permit Number 7699/PSD-TX-226M6, and THSC, §382.085(b), by failing to maintain and operate the vinyl plant in a manner consistent with good air pollution practice; and 30 TAC §116.115(b) and (c), Permit Number 7699/PSD-TX-226M6, and THSC, §382.085(b), by failing to maintain an emission rate; PENALTY: $24,600; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Fort Gates Water Supply Corporation; DOCKET NUMBER: 2004-0925- PWS-E; IDENTIFIER: PWS Number 0500017, RN101216257; LOCATION: Gatesville, Coryell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2), (n), (t), and (u), by failing to provide systems records to be reviewed at the time of inspection, by failing to provide an up-to-date map of the distribution system, by failing to test public water system wells that are not in use but have not been abandoned, by failing to post a legible sign at each production, treatment, and storage facility, and by failing to plug an abandoned well; 30 TAC §290.41(c)(1)(F) and (3)(B) and (L) - (O), by failing to provide a sanitary easement, by failing to provide a proper sample tap on all water wells, by failing to provide a flow measuring device, by failing to provide well casing to a height of 18 inches, by failing to properly install the well blow-off line, and by failing to provide an intruder-resistant fence; and 30 TAC §290.44(d)(1) and (h)(1)(A), by failing to properly install air release devices in the distribution system and by failing to install backflow prevention assemblies; PENALTY: $2,120; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Holder Management and Construction, Inc.; DOCKET NUMBER: 2004- 0778-SLG-E; IDENTIFIER: Transporter Registration Number 22744; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: waste transporting business; RULE VIOLATED: 30 TAC §312.143 and the Code, §26.121, by discharging about 400 gallons of chemical toilet waste into an intermittent stream without authorization and 30 TAC §312.145, by failing to maintain a record of the waste collected and discharged without authorization; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Jeld-Wen, Inc.; DOCKET NUMBER: 2004-0619-AIR-E; IDENTIFIER: Air Account Number BF-0165-E, RN100833219; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: door manufacturing; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by operating without first obtaining a permit or qualifying for a permit by rule; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570- 1359; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751- 0335.

(24) COMPANY: Magellan Terminals Holdings, L.P.; DOCKET NUMBER: 2004-0487-AIR- E; IDENTIFIER: Air Account Number HG-0017-W, RN102180486; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: petrochemical marine terminal; RULE VIOLATED: 30 TAC §113.300 and §116.115(c), Flexible Permit Number 4850, 40 CFR §63.563(b)(1) and §63.567(e) and (j)(1), and THSC, §382.085(b), by failing to conduct the performance test for the thermal oxidizers, by failing to submit the summary reports and/or excess emissions reports, and by failing to submit the annual report of the source's hazardous air pollutants control efficiency; 30 TAC §101.20(2), 40 CFR §60.113(a)(5), and THSC, §382.085(b), by

failing to notify the TCEQ of the degassing and refilling of Tank Number 375; and 30 TAC §122.145(2)(A) - (C) and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $20,400; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Military Highway Water Supply Corporation; DOCKET NUMBER: 2004- 0878-MWD-E; IDENTIFIER: Water Quality Permit Number 13462-003, RN101512499; LOCATION: Santa Maria, Cameron County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and Water Quality Permit Number 13462-003, by failing to prevent ponding in areas irrigated by wastewater application and erosion around the banks of the effluent hold pond; PENALTY: $2,200; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: Northside Independent School District; DOCKET NUMBER: 2004-0734- EAQ-E; IDENTIFIER: Edwards Aquifer Registration Number 13-03021801A, RN103614780; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: bus maintenance; RULE VIOLATED: 30 TAC §213.23(a)(1)(B), by failing to obtain approval of an Edwards Aquifer contributing zone plan; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: Oasis Car Wash, Inc. dba Magic Car Wash 7 Lube Center; DOCKET NUMBER: 2004-0636-PST-E; IDENTIFIER: PST Facility Identification Number 065381; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: car wash and lube center; RULE VIOLATED: 30 TAC §334.10(b) and the Code, §26.3475(a), by failing to have the UST system's operational records available; 30 TAC §37.835(b), by failing to provide a properly worded insurance policy; 30 TAC §115.246(5) and (6) and THSC, §382.085(b), by failing to have vapor recovery testing records available and by failing to have Stage II daily inspection records available; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to make current employees aware of the purpose and correct operation of the Stage II equipment; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: City of Prosper; DOCKET NUMBER: 2004-0749-MWD-E; IDENTIFIER: TPDES Permit Number 10915-001, RN100604321; LOCATION: Prosper, Collin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10915-001, and the Code, §26.121(a), by failing to comply with permitted limits for total residual chlorine and dissolved oxygen; PENALTY: $3,340; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Rio Grande Regional Hospital, Inc.; DOCKET NUMBER: 2004-0737-PST-E; IDENTIFIER: PST Facility Identification Number 44597, RN100680529; LOCATION: McAllen, Hidalgo County, Texas; TYPE OF FACILITY: petroleum storage tank; RULE VIOLATED: 30 TAC §334.50(b)(2)(B)(i)(I) and (d)(4)(B) and the Code, §26.3475(b) and (c)(1), by failing to perform a tightness test on the piping and by failing to meet the requirements for use of automatic tank gauging as a method of release detection; and 30 TAC §334.10(b)(1)(B) and §334.50(e), by failing to maintain all of the required records pertaining to its UST system; PENALTY: $4,416; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: Justin Rosenfeld; DOCKET NUMBER: 2004-0600-AGR-E; IDENTIFIER: RN103730073; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: base agricultural operation (formerly a dairy); RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from a silage stockpile; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(31) COMPANY: Bernard J. Seidel dba Seidel's Country Store; DOCKET NUMBER: 2004- 1096-PST-E; IDENTIFIER: PST Facility Identification Number 70254; LOCATION: Red Rock, Bastrop County, Texas; TYPE OF FACILITY: convenience store with an underground storage tank; RULE VIOLATED: 30 TAC §37l.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339- 2929.

(32) COMPANY: Signature Stores, Inc. dba One Stop Fina; DOCKET NUMBER: 2004-0514- PST-E; IDENTIFIER: PST Facility Identification Number 38759, RN101542611; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records on site; and 30 TAC §334.21(a) and (b) and §334.22(a), by failing to pay outstanding late fees and annual UST fees; PENALTY: $3,510; ENFORCEMENT COORDINATOR: Steven Lopez (512) 239-1896; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Thomas Newman dba T J & N Water Company dba Cedar Oaks Mobile Home Community and Homestead Oaks Mobile Home Community; DOCKET NUMBER: 2004-0750- PWS-E; IDENTIFIER: PWS Numbers 1011556 and 1011734, Certificate of Convenience and Necessity Number 12937, RNS 101203297 and 101251858; LOCATION: Spring, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.93(3) and the Code, §13.139(d), by failing to provide a written planning report; 30 TAC §290.45(b)(1)(A)(i) and (C)(ii) and (iii), and THSC, §341.0315(c), by failing to provide a well capacity of 1.5 gallons per minute (gpm) per connection, by failing to provide a minimum total storage capacity of 200 gallons per connection, and by failing to provide two or more service pumps having a total storage capacity of two gpm per connection; PENALTY: $2,416; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Tecon Water Company, L.P.; DOCKET NUMBER: 2004-0117-MLM-E; IDENTIFIER: TPDES Permit Number 13879-001, PWS Numbers 1070106, 1110025, 1110004, 1110060, 1110003, 1110002, 1110044, 1110036, 1110022, and 1050028, RNS 102177458, 101376085, 101376226, 101380848, 101379899, 101377190, 101376648, 101379006, 101380079, 101379832, and 100837908; LOCATION: Caney City, Granbury, and Kyle, Henderson, Hood, and Hays Counties, Texas; TYPE OF FACILITY: wastewater treatment and public water supplies; RULE VIOLATED: 30 TAC §305.125(1) and the Code, §26.121(a), by failing to comply with the permitted effluent limits; 30 TAC §290.44(c) and (d), and the June 20, 2002 Commission Order (Docket Number 2000-1217-PWS-E), by failing to provide proper size water lines, by failing to submit written certification of compliance, by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi),and by failing

to provide a minimum pressure of 20 psi during emergencies; 30 TAC §290.118(a), THSC, §341.031(a), and June 20, 2002 Commission Order (Docket Number 2000-1217-PWS-E), by failing to obtain written approval prior to providing water that fails to meet secondary water quality standards; 30 TAC §290.46(c)(5)(B), (f)(3)(B)(iii) and (D), (q)(1), and (r), and §290.110(c)(5)(B), by failing to perform and record weekly chlorine residual tests, by failing to maintain records of annual ground storage tank (GST) and pressure tank inspections, by failing to maintain records of annual GST and pressure tank inspections, by failing to perform and record weekly chlorine residual tests, by failing to issue a boil water notice and by failing to provide a minimum pressure of 20 psi during emergencies; 30 TAC §290.42(e)(4)(A), by failing to provide a fresh bottle of ammonia solution to test for possible chlorine leakage; 30 TAC §290.41(c)(1)(F) and (3)(K) and (P), and the June 20, 2002 Commission Order (Docket No. 2000-1217-PWS-E), by failing to provide a sanitary control easement, by failing to provide wells with adequate screened casing vents, and by failing to provide an all-weather access road to well sites; 30 TAC §290.43(c)(1) and (2), by failing to provide a GST with an adequate gooseneck vent, by failing to seal an opening on a GST, and by failing to maintain the roof vent hatch; and 30 TAC §290.45(b)(1)(B)(i), (C)(i), and (D)(i), THSC, §341.0315(c), and the June 20, 2002 Commission Order (Docket No. 2000-1217-PWS-E), by failing to provide a production capacity of 0.6 gpm per connection, by failing to provide a production capacity of 0.6 gpm per connection, and by failing to provide a well production capacity of 0.6 gpm per connection; PENALTY: $21,371; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICES: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800; 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100; and 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758- 5336, (512) 339-2929.

(35) COMPANY: City of Temple; DOCKET NUMBER: 2004-0570-PWS-E; IDENTIFIER: PWS Number 0140005, RN101249308; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(8), by failing to properly maintain the exterior coating on the elevated storage tank; 30 TAC §290.46(m)(1) and (4), by failing to inspect the storage tanks at least once annually and by failing to properly maintain all water treatment piping and related appurtenances in a watertight condition; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the distribution system; 30 TAC §290.122(a)(2), by failing to issue a boil water notice; 30 TAC §290.44(d)(1), by failing to design and maintain a water distribution system and by failing to provide proper screening for all air release devices; and 30 TAC §290.42(d)(2)(A) and (6)(C), by failing to provide vacuum breakers on all hose bibbs and by failing to provide a label to identify the contents of the chemical bulk storage day tank; PENALTY: $2,888; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(36) COMPANY: Texas A&M University; DOCKET NUMBER: 2004-0656-MWD-E; IDENTIFIER: TPDES Permit Numbers WQ0004002000 and WQ0002585000; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Numbers WQ0002585000 and WQ0004002000, and the Code, §26.121(a), by failing to meet the effluent limits for chemical oxygen demand, TSS, total petroleum hydrocarbons, five-day biochemical oxygen demand, dissolved oxygen, flow, pH, and free available chlorine; PENALTY: $12,440; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(37) COMPANY: The Hertz Corporation; DOCKET NUMBER: 2004-0653-PST-E; IDENTIFIER: PST Facility Identification Number 31389; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: equipment rental company with gasoline dispensing station; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii) and the Code, §26.346(a), by failing to renew a previously issued UST delivery certificate; and 30 TAC §361.603(b)(2) and the Code, §5.702(a), by failing to pay voluntary cleanup program fees; PENALTY: $720; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(38) COMPANY: The Hitting Zone, LLC; DOCKET NUMBER: 2004-0434-EAQ-E; IDENTIFIER: RN103996344; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: batting cages; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer protection plan; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(39) COMPANY: Village Farms, L.P. dba Village Farms of Texas; DOCKET NUMBER: 2004- 0256-PWS-E; IDENTIFIER: PWS Number 1220012; LOCATION: Fort Davis, Jeff Davis County, Texas; TYPE OF FACILITY: hydroponic tomato plant nursery; RULE VIOLATED: the Code, §26.121(a)(1), by failing to obtain a permit for the discharge of process wastewater; PENALTY: $5,700; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(40) COMPANY: ZSA Investment Inc. dba JS Food Mart; DOCKET NUMBER: 2004-0588- PST-E; IDENTIFIER: PST Facility Identification Number 24373, RN102259504; LOCATION: Schertz, Guadalupe County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to physically label all tank fill pipes according to the registration/self-certification form; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to have an approved method of release detection; 30 TAC §334.7(d)(3), by failing to amend the PST registration; and 30 TAC §334.10(b), by failing to have completed records; PENALTY: $3,960; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200405663
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 14, 2004

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Department of State Health Services

Designation of Dallas County Jail System as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Dallas County Jail System, 111 Commerce Street, Dallas, Texas 75207. The designation is based

on eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200405682
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: September 15, 2004

Designation of Ripley House Pediatrics as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Ripley House Pediatrics, 4410 Navigation, Suite 278, Houston, Texas 77011. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200405679
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: September 15, 2004

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Ronald J. Smith, D.D.S., Humble, R10694; Brownsville Community Health Center, Brownsville, R10868; Rodney Sellars, Jr., D.D.S., Caldwell, R10893; Clifford Charles Seidel, M.D., P.A., Dallas, R17774; Midland Walk In and Cardiology Clinic, PLLC, Midland, R17812; Trico Technologies, Brownsville, R20056; Max Weinberg, D.P.M., Paris, R20126; West Texas Orthopaedics & Sports Medicine, El Paso, R20784; Baggett Chiropractic Center, Arlington, R21331; International Paint, Houston, R23039; G. Scott Sauer, D.D.S., Amarillo, R23088; Lamb County Veterinary Hospital, Littlefield, R24513; Najah M. Al-Shalchi, M.D., P.A., San Antonio, R24488; Greater Gulf Health Plan, Inc., Houston, R24531; Michael Anthony Charles, D.D.S., Crosby, R26378; First Pain Associates of Texas, LLC, Arlington, R26419; Chism Radiology, Vernon, R26564; David A. Harvey, Houston, R27266; Bastrop Open MRI, LP, Bastrop, R27271; Harris Methodist Southwest, Fort Worth, Z00525; Radiology Services, Inc., Tampa, Florida, R20137; Novartis Pharmaceutical Corporation, Summit, New Jersey, R24370.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200405680
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: September 15, 2004

Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following radioactive material licensees: CHCA Bayshore, LP, Pasadena, L00153; Falls Community Hospital, Marlin, L04903.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200405681

Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: September 15, 2004

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Allure Laser and Day Spa, Inc.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Allure Laser and Day Spa, Inc. (Unregistered) of Austin. A total penalty of $8,000 is proposed to be assessed the company for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200405683
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: September 15, 2004

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Dannebaum Environmental Corporation

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Dannebaum Environmental Corporation (licensee-L05240) of Houston. A total penalty of $5,000 is proposed to be assessed the licensee for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200405684
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: September 15, 2004

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Texas Health and Human Services Commission

Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 03-11, Amendment Number 646.

This amendment merges Targeted Case management for Pregnant Women and Infants and the Texas Health Steps Medical Case Management programs into a case management service known as Targeted Case Management for Children and Pregnant Women, effective September 1, 2003.

If additional information is needed, please contact Marianna Zolondek by telephone at (512) 491-1117 or by E-mail at marianna.zolondek@hhsc.state.tx.us.

TRD-200405701
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 15, 2004

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 04-09, Amendment Number 664, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

This amendment provides for the implementation of the Disease Management Program to satisfy the requirements of House Bill 727, 78th Legislature, regular session (2003), which mandated HHSC, by rule, to provide a Disease Management Program. The Disease Management Program works in conjunction with Medicaid and is not a duplicative service. It is designed to be a preventive service for individuals who receive services through the Texas Medicaid Program and who have one or more of the following diseases: Congestive Heart Failure (CHF), Asthma, Diabetes, Chronic Obstructive Pulmonary Disease (COPD) and Coronary Artery Disease (CAD). The effective date of the amendment is anticipated to be October 01, 2004.

If additional information is needed, please contact Arnulfo Gomez by telephone at (512) 491-1117 or by E-mail at arnulfo.gomez @hhsc.state.tx.us.

TRD-200405703
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 15, 2004

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Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare & Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 04-02, Amendment Number 669, effective April 1, 2004.

The purpose of this amendment is to allow the state to receive 100% federal medical assistance percentage (FMAP) reimbursement for outpatient services provided in Indian Health Services facilities to Native American Medicaid beneficiaries operating under the authority of Public Law 93-638. The applicable rate for these services will be paid as published and specified by the office of Management and Budget (OMB) in the Federal Register.

If additional information is needed, please contact Marianna Zolondek by telephone at (512) 491-1117 or by E-mail at marianna.zolondek@hhsc.state.tx.us.

TRD-200405702
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 15, 2004

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 04-04, Amendment Number 671, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The amendment revises the definitions of the benefits and limitations of the services offered under School Health and Related Services to allow for the delivery of group services. Additionally, the amendment allows for Registered Nurse (RN) and Licensed Vocational Nurse (LVN) services, medication administration, nursing services delegated by an RN to unlicensed personnel, personal care services, and transportation aides activities. The effective date of the amendment is anticipitated to be September 01, 2004.

If additional information is needed, please contact Arnulfo Gomez by telephone at (512) 491-1166 or by E-mail at arnulfo.gomez@hhsc.state.tx.us.

TRD-200405700
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 15, 2004

Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare & Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 04-05, Amendment Number 672, effective April 1, 2004.

The purpose of this amendment is to allow a Prospective Payment System (PPS) rate to be calculated for a Rural Health Clinic (RHC) that does not have an audited cost report from its Medicare intermediary for its 1999 and/or 2000 fiscal years.

If additional information is needed, please contact Marianna Zolondek by telephone at (512) 491-1117 or by E-mail at marianna.zolondek@hhsc.state.tx.us.

TRD-200405704
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 15, 2004

Public Notice Statement

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 04-23, Amendment Number 687, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The purpose of this amendment is to increase the income limit for adult pregnant women to 185% of the Federal Poverty Income Limit (FPL).

The proposed amendment effective date is anticipated to be September 1, 2004. The proposed amendment is estimated to result in annual aggregate expenditures of approximately $52 million for state fiscal year (SFY) 2005, with approximately $32 million federal funds expenditures and approximately $20 million state general revenue expenditures

To obtain copies of the proposed amendment, interested parties may contact Lesa Ledbetter by mail at Medicaid/CHIP, Texas Health and Human Services Commission, 1100 West 49th Street, H-410, Austin, Texas 78756-3160; by telephone at (512) 491-1199; by facsimile at (512) 491-1953; or by e-mail at lesa.ledbetter@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-200405699
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 15, 2004

Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Alta Cullen Apartment) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Woodson Middle School, 10720 Southview Street, Houston, Texas 77047, at 6:00 p.m. on October 13, 2004 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $14,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Alta Cullen Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 240-unit multifamily residential rental development to be located near the northeast intersection of Scott Street and Beltway 8, S. Sam Houston Tollway West, at approximately the 3500 block of Beltway 8, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200405635
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 13, 2004

Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Kemper Independence Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages -.60 to +2.57 by coverage, classification, and territory. The overall rate change is -1.1%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by October 11, 2004.

TRD-200405689
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 15, 2004

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Unitrin Auto and Home Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages +1.14 to +4.07 by coverage, classification, and territory. The overall rate change is +5.6%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by October 11, 2004.

TRD-200405690
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 15, 2004

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Unitrin Preferred Insurance Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting flex percentages -.80 to +3.03 by coverage, classification, and territory. The overall rate change is -5.1%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by October 11, 2004.

TRD-200405691
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 15, 2004

Notice of Filing

The following petition has been filed with the Texas Department of Insurance, and is under consideration:

The adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association (TAIPA), pursuant to Article 21.81.

The proposal is a revision and restatement of the TAIPA Plan of Operation, including implementation of Senate Bill 14, passed by the 78th Texas Legislature, Regular Session. TAIPA has also submitted some additional documents explaining how the Plan of Operation is being rearranged and amended. TAIPA's petition refers to a few additions, but explains that they are not "a significant departure from the current Plan of Operation, and any substantive changes are identified."

This filing is subject to Department approval without a hearing. Any comments may be filed with the Office of the Chief Clerk, Texas Department of Insurance, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice. An additional copy is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

For further information or to request a copy of the proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (reference number A-0604-06).

TRD-200405610
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 9, 2004

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of PREFERRED BENEFITS ADMINISTRATOR, INC., a foreign third party administrator. The home office is WICHITA, KANSAS.

Application for incorporation in Texas of Benefits Network, Inc., a domestic third party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200405688

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 15, 2004

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 499 "Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 499 is "SET FOR LIFE". The play style is "key number match with auto win and/or multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 499 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 499.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,500 and $5,000/WK.

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. 499 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$

$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$5,000/WK	5TH/WK

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. 499 - 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 $50.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,500 or $5,000/WK ($5,000 per week not to exceed $5,000,000 total).

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 (499), 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: 499-0000001-000.

L. Pack - A pack of "SET FOR LIFE" 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 "SET FOR LIFE" Instant Game No. 499 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 "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player will win prize shown for that number. If a player reveals a COIN SYMBOL, the player wins prize indicated instantly. If a player reveals a STAR SYMBOL, the player wins ten (10) times the prize shown. If the player reveals a LIFE play symbol, the player wins $5,000 per week (not to exceed $5,000,000 total). 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 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The LIFE play symbol will only appear with the $5,000/WK prize symbol and both symbols will only appear on the two winning tickets as dictated by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SET FOR LIFE" Instant Game prize of $1,000 or $2,500, 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 "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, $500, $1,000 or $2,500, 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. When claiming a "SET FOR LIFE" Instant Game prize of $5,000 per week , (not to exceed $5,000,000 total), the claimant must choose one of four (4) payment options for receiving his prize:

1. Weekly via direct deposit to the winner's account. With this plan, upon validation of the prize, 52 weekly payments of $5,000, less Federal withholding, will be made each Wednesday up to $260,000 per year. Additional payment(s) may be made to reach the total maximum payment of $5,000,000. *NOTE: The investment is based on 52 weeks

per year. Some years may have 53 weeks per year, however, only 52 weeks per year will be paid. In years with 53 weeks, no payment will be made on the last Wednesday in December.

2. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, an initial payment of $21,674 less Federal withholding will be made each year on the first business day of the month of the claim. A payment of $21,666 less Federal withholding will be made on the first business day of each additional month of the year for a combined total of $260,000 per year. Additional payment(s) may be made to reach the total maximum payment of $5,000,000. *The investment is based on 52 weeks per year.

3. Quarterly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $65,000 less Federal withholding will be made four times a year on the first business day of the first month of each calendar quarter (January, April, July, October) for a total of $260,000 per year. Additional payment(s) may be made to reach the total maximum payment of $5,000,000. *The investment is based on 52 weeks per year.

4. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $260,000 less Federal withholding will be made once a year on the first business day of the anniversary month of the claim. Additional payment(s) may be made to reach the total maximum payment of $5,000,000. *The investment is based on 52 weeks per year.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. 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.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 "SET FOR LIFE" 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 "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 499. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 499 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,393,600	5.77
$20	643,200	12.50
$50	138,020	58.25
$100	107,200	75.00
$200	17,420	461.54
$500	2,345	3,428.57
$1,000	134	60,000.00
$2,500	134	60,000.00
$5K/WK/LIFE	2	4,020,000.00

*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 3.49. 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. 499 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. 499, 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-200405618
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 10, 2004

Instant Game Number 502 "Fast Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 502 is "FAST CASH". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 502 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 502.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, $$ SYMBOL, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $200 and $5,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 502 - 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
$$	DBL
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWO HUND
$5,000	FIV 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. 502 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
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 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, $4.00, $5.00, $6.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $200.

I. High-Tier Prize - A prize of $5,000.

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 (502), 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: 502-0000001-000.

L. Pack - A pack of "FAST CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 on the next page; etc.; and tickets 245 to 249 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket 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 "FAST CASH" Instant Game No. 502 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 "FAST CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a "5" play symbol in any play area, the player wins prize indicated for that play area. If a player reveals a "$$" play symbol in any play area, the player wins double the prize indicated for that play area. 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 12 (twelve) 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 12 (twelve) 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 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning play symbols will never occur with the same prize symbol (i.e. 10 and $10).

E. The doubler symbol will only appear on intended winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "FAST CASH" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $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 $30.00, $60.00, $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 "FAST CASH" Instant Game prize of $5,000 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 "FAST CASH" 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 "FAST CASH" 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 "FAST CASH" 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. 502. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 502 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,270,080	11.90
$2	1,512,000	10.00
$3	120,960	125.00
$4	90,720	166.67
$5	60,480	250.00
$6	60,480	250.00
$10	60,480	250.00
$20	45,360	333.33
$30	14,175	1,066.67
$60	9,450	1,600.00
$100	2,205	6,857.14
$200	1,701	8,888.89
$5,000	63	240,000.00

*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 4.65. 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. 502 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. 502, 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-200405619
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 10, 2004

Instant Game Number 503 "Money Maker"

1.0 Name and Style of Game.

A. The name of Instant Game No. 503 is "MONEY MAKER". The play style for Game 1 is "three in a line". The play style for Game 2 is "key symbol match with doubler". The play style for Game 3 is "key symbol match". The play style for Game 4 is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 503 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 503.

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: $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $100,000, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL, STACK OF COINS SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, TRY AGAIN SYMBOL, NEXT SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and VAULT 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. 503 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIVE HUND
$1,000	ONE THOU
$100,000	HUN THOU
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAM
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
STACK OF COINS SYMBOL	COINS
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
TRY AGAIN SYMBOL	TRY AGAIIN
NEXT SYMBOL	TIME
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
VAULT SYMBOL	WIN

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. 503 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. 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 $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize- A prize of $1,000, $5,000 or $100,000.

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 (503), 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: 503-0000001-000.

L. Pack - A pack of "MONEY MAKER" 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 "MONEY MAKER" Instant Game No. 503 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 "MONEY MAKER" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. In Game 1, if a player matches three (3) identical play symbols, either diagonally, vertically or horizontally the player wins that amount indicated. In Game 2, if a player matches three (3) identical play symbols, the player wins prize indicated in PRIZE BOX. If a player matches four (4) identical play symbols the player wins DOUBLE the prize indicated in PRIZE BOX. In Game 3, if player reveals any prize amount, the player wins prize indicated. In Game 4, if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins prize indicated for that number. If a player reveals a VAULT play symbol, the player wins all 12 (twelve) prizes in GAME 4 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game1: No more than four like amounts in this game.

C. Game 1: No three or more pairs in this game.

D. Game 2: No five or more like symbols in this game.

E. Game 2: No more than one non-winning pair of like symbols in this game.

F. Game 4: No more than two pairs of non-winning prize symbols in this game.

G. Game 4: The play symbols, with the exception of the "VAULT" play symbol, will be used an approximately equal number of times as the basis for a win.

H. Game 4: The "VAULT" play symbol will appear only on intended winning tickets as dictated by the prize structure.

I. Game 4: Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. Game 4: No prize amount in a non-winning spot will correspond with the Your Numbers play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MAKER" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MAKER" Instant Game prize of $1,000, $5,000 or $100,000, 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 "MONEY MAKER" 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 "MONEY MAKER" 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 "MONEY MAKER" 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. 503. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 503 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	604,800	8.33
$10	336,000	15.00
$15	201,600	25.00
$20	117,600	42.86
$50	67,200	75.00
$100	11,676	431.65
$500	504	10,000.00
$1,000	40	126,000.00
$5,000	10	504,000.00
$100,000	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 3.76. 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. 503 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. 503, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2004

Instant Game Number 505 "Texas Ringer"

1.0 Name and Style of Game.

A. The name of Instant Game No. 505 is "TEXAS RINGER". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 505 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 505.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A1, A2, A3, A4, A5, B1, B2, B3, B4, B5, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, F1, F2, F3, F4, F5, G1, G2, G3, G4, and G5.

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. 505 - 1.2D

PLAY SYMBOL	CAPTION
A1	
A2	
A3	
A4	
A5	
B1	
B2	
B3	
B4	
B5	
C1	
C2	
C3	
C4	
C5	
C6	
C7	
C8	
C9	
C10	
C11	
C12	
D1	
D2	
D3	
D4	
D5	
D6	
D7	
D8	
D9	
D10	
D11	
D12	
E1	
E2	
E3	
E4	
E5	
E6	
E7	
E8	
E9	
E10	
E11	
E12	

F1	
F2	
F3	
F4	
F5	
G1	
G2	
G3	
G4	
G5	

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. 505 - 1.2E

CODE	PRIZE
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
FTN	$15.00
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, $4.00, $5.00, $6.00, $10.00 $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $150 or $200.

I. High-Tier Prize- A prize of $1,000, $10,000 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 (505), 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: 505-0000001-000.

L. Pack - A pack of "TEXAS RINGER" Instant Game tickets contains 125 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 124 while the other fold will show the back of ticket 000 and front of 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 "TEXAS RINGER" Instant Game No. 505 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 "TEXAS RINGER" Instant Game is determined once the latex on the ticket is scratched off to expose 91 (ninety-one) Play Symbols. The player must scratch all 35 (thirty-five) squares in the YOUR THROWS play grid area to reveal the 35 (thirty-five) letter-number combination play symbols. The player must find the corresponding grid location on the HORSESHOE GRID and scratch that square. If the player reveals a complete horizontal row of horseshoe play symbols in the HORSESHOE GRID using the YOUR THROWS play symbols, the player wins the corresponding prize for that row. If the player reveals a RINGER (squares C2, C3, C4, D4, E4, E3 and E2)

using YOUR THROWS play symbols, the player wins $35,000. 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 91 (ninety-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 91 (ninety-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 91 (ninety-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 91 (ninety-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot in the YOUR THROWS play area.

B. There will be no duplicate play symbols in the YOUR THROWS play area.

C. A win created by matching YOUR THROWS play symbols to a completed horizontal line of matched horseshoe grid locations will only appear as dictated by the prize structure.

D. A win created by matching YOUR THROWS play symbols to create a RINGER (squares C2, C3, C4, D4, E4, E3 and E2) will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS RINGER" Instant Game prize of $3.00, $4.00, $5.00, $6.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $150 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 $25.00, $50.00, $100, $150 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 "TEXAS RINGER" Instant Game prize of $1,000, $10,000 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 "TEXAS RINGER" 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 "TEXAS RINGER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "TEXAS RINGER" 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 4,080,000 tickets in the Instant Game No. 505. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 505 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3.00	261,120	15.63
$4.00	212,160	19.23
$5.00	130,560	31.25
$6.00	89,760	45.45
$10.00	65,280	62.50
$15.00	48,960	83.33
$20.00	40,800	100.00
$25.00	32,640	125.00
$50.00	7,480	545.45
$100	5,270	774.19
$150	2,720	1,500.00
$200	850	4,800.00
$1,000	272	15,000.00
$10,000	20	204,000.00
$35,000	8	510,000.00

*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 4.54. 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. 505 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. 505, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2004

Instant Game Number 513 "Holiday Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 513 is "HOLIDAY GOLD". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 513 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 513.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16,17, 18, 19, 20, 21, 22, 23, 24, CHRISTMAS TREE SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00,$20.00, $50.00, $100, $200, $2,000 and $25,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 513 - 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
CHRISTMAS TREE SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$2,000	TWO 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. 513 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a 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, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $70.00 or $100.

I. High-Tier Prize - A prize of $2,000 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 (513), 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: 513-0000001-000.

L. Pack - A pack of "HOLIDAY GOLD" 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 "HOLIDAY GOLD" Instant Game No. 513 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 "HOLIDAY GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbols the player wins prize indicated for that number. If a player reveals a Christmas tree play symbol, the player wins DOUBLE the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Number play symbols on a ticket.

D. No 3 or more like non-winning prize symbols on a ticket.

E. The doubler symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The doubler symbol will never appear more than once on a ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY GOLD" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $70.00 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 $50.00, $70.00 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 "HOLIDAY GOLD" Instant Game prize of $2,000 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 "HOLIDAY GOLD" 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 "HOLIDAY GOLD" 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 "HOLIDAY GOLD" 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 10,080,000 tickets in the Instant Game No. 513. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 513 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	967,680	10.42
$4	806,400	12.50
$5	161,280	62.50
$10	100,800	100.00
$20	100,800	100.00
$50	41,160	244.90
$70	18,900	533.33
$100	3,780	2,666.67
$2,000	26	387,692.31
$25,000	12	840,000.00

*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 4.58. 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. 513 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. 513, 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-200405706

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 15, 2004

Instant Game Number 514 "12 Days of Winning"

1.0 Name and Style of Game.

A. The name of Instant Game No. 514 is "12 DAYS OF WINNING". The play style is "key symbol match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 514 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 514.

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: Day 1, Day 2, Day 3, Day 4, Day 5, Day 6, Day 7, Day 8, Day 9, Day 10, Day 11, Day 12, $1.00, $2.00, $4.00, $10.00, $12.00, $20.00, $24.00, $48.00, $100, $200, $500, $1,000, $10,000, $120,000. The possible red and black play symbols are: PARTRIDGE SYMBOL, DOVES SYMBOL, HEN SYMBOL, CALLING BIRDS SYMBOL, GOLD RINGS SYMBOL, GEESE SYMBOL, SWANS SYMBOL, MAIDS SYMBOL, LADIES SYMBOL, LORDS SYMBOL, PIPERS SYMBOL and DRUMMERS 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. 514 - 1.2D

PLAY SYMBOL	CAPTION
DAY 1	
DAY 2	
DAY 3	
DAY 4	
DAY 5	
DAY 6	
DAY 7	
DAY 8	
DAY 9	
DAY 10	
DAY 11	
DAY 12	
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$10.00	TEN$
$12.00	TWELVE
$20.00	TWENEY
$24.00	TWY FOR
$48.00	FRY EGT
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	10 THOU
$120,000	120 THOU
PARTRIDGE SYMBOL (black or red)	PARTRIDGE
DOVES SYMBOL (black or red)	DOVES
HEN SYMBOL (black or red)	HEN
CALLING BIRDS SYMBOL (black or red)	CLNG BRDS
GOLD RINGS SYMBOL (black or red)	GOLD RINGS
GEESE SYMBOL (black or red)	GEESE
SWANS SYMBOL (black or red)	SWANS
MAIDS SYMBOL (black or red)	MAIDS
LADIES SYMBOL(black or red)	LADIES
LORDS SYMBOL (black or red)	LORDS
PIPERS SYMBOL(black or red)	PIPERS
DRUMMERS SYMBOL (black or red)	DRUMMERS

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. 514 - 1.2E

CODE	PRIZE
TEN	$10.00
TWL	$12.00
TWN	$20.00
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 $10.00, $12.00, $20.00 or $24.00.

H. Mid-Tier Prize - A prize of $48.00, $100, $144, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $1,200, $10,000, $12,000 or $120,000.

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 (514), 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: 514-0000001-000.

L. Pack - A pack of "12 DAYS OF WINNING" Instant Game tickets contains 074 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 "12 DAYS OF WINNING" Instant Game No. 514 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 "12 DAYS OF WINNING" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) Play Symbols. If a player matches any of YOUR DAYS play symbols to the corresponding play symbol shown in the DAY LEGEND for that day, the player wins prize indicated for that DAY play area. If a player reveals a RED YOUR DAY play symbol and matches it to the corresponding DAY LEGEND play symbol for that day, the player wins 12 TIMES the prize indicated for that DAY play area. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 24 (twenty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 24 (twenty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 24 (twenty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. There will be a minimum of four and a maximum of eight red play symbols per ticket unless otherwise restricted by the prize structure.

D. No duplicate play symbols on a ticket (in either color.)

2.3 Procedure for Claiming Prizes.

A. To claim a "12 DAYS OF WINNING" Instant Game prize of $10.00, $12.00, $20.00, $24.00, $48.00, $100, $144, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $48.00, $100, $144, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "12 DAYS OF WINNING" Instant Game prize of $1,000, $1,200, $10,000, $12,000 or $120,000, 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 "12 DAYS OF WINNING" 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 "12 DAYS OF WINNING" 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 "12 DAYS OF WINNING" 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 3,000,000 tickets in the Instant Game No. 514. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 514 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	800,000	3.75
$12	160,000	18.75
$20	120,000	25.00
$24	60,000	50.00
$48	40,000	75.00
$100	15,000	200.00
$144	5,500	545.45
$200	4,000	750.00
$500	1,975	1,518.99
$1,000	50	60,000.00
$1,200	60	50,000.00
$10,000	4	750,000.00
$12,000	29	103,448.28
$120,000	6	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 2.49. 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. 514 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. 514, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 15, 2004

Instant Game No. 530 "Instant Monopoly"

1.0 Name and Style of Game.

A. The name of Instant Game No. 530 is "INSTANT MONOPOLY". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 530 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 530.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, GO SYMBOL, $1.00, $2.00, $3.00, $5.00, $8.00, $10.00, $15.00, $25.00, $50.00, $100, $200, $1,000, $2,500 and $25,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 530 - 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
GO SYMBOL	$200
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$15.00	FIFTN
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$2,500	25 HUND
$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. 530 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
EGT	$8.00
TEN	$10.00
FTN	$15.00

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- $2.00, $3.00, $5.00, $8.00, $10.00 or $15.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $200.

I. High-Tier Prize- A prize of $1,000, $2,500 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 (530), 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: 530-0000001-000.

L. Pack - A pack of "INSTANT MONOPOLY" 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- 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 "INSTANT MONOPOLY" Instant Game No. 530 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 "INSTANT MONOPOLY" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of the YOUR HOTEL NUMBERS play symbols to any of the HOUSE NUMBERS play symbols win prize indicated for that number. If a player gets a "GO" play symbol, the player wins $200 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-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 23 (twenty-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 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning HOUSE NUMBERS play symbols on a ticket.

C. No duplicate YOUR HOTEL NUMBERS play symbols on a ticket.

D. No three (3) or more like non-winning prize symbols on a ticket.

E. No more than one pair of duplicate non-winning prize symbols on a ticket.

F. The auto win GO symbol will only appear with the $200 prize symbol.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the HOUSE NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT MONOPOLY" Instant Game prize of $2.00, $3.00, $5.00, $8.00, $10.00, $15.00, $25.00, $50.00, $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 $25.00, $50.00, $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 "INSTANT MONOPOLY" Instant Game prize of $1,000, $2,500 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 "INSTANT MONOPOLY" 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 "INSTANT MONOPOLY" 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 "INSTANT MONOPOLY" 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 530.408. 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 10,080,000 tickets in the Instant Game No. 530. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 530 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	1,008,000	10.00
$3	524,160	19.23
$5	322,560	31.25
$8	80,640	125.00
$10	80,640	125.00
$15	60,480	166.67
$25	40,320	250.00
$50	40,320	250.00
$100	5,964	1,690.14
$200	2,520	4,000.00
$1,000	42	240,000.00
$2,500	24	420,000.00
$25,000	8	1,260,000.00

*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 4.65. 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. 530 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. 530, the State Lottery Act (Texas Government Code, Chapter 530), 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-200405661
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 13, 2004

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Motley County Commissioners Court

Request for Comments and Proposals

Section 32.0244 of the Texas Human Resources Code permits a County Commissioner's Court of a rural county (defined as a county with a population of 100,000 or less) with no more than two nursing homes to request that the Texas Department of Aging and Disabilities (DADS) contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Motley County Commissioners' Court has notified DADS of the intent for Motley County to consider a rural county Medicaid bed waiver. The Commissioners' Court is seeking comments from all interested parties on the appropriateness of such a request. The Court is also seeking proposals from qualified persons or entities interested in providing additional Medicaid-certified beds in Motley County.

The Motley County Commissioners' Court will determine whether to proceed with the waiver request after considering all comments and proposals received on or before October 8, 2004.

Comments and proposals should be submitted to Ed D. Smith, Motley County Judge, P.O. Box 719, Matador, Texas 79244.

TRD-200405695
Ed D. Smith
Motley County Judge
Motley County Commissioners Court
Filed: September 15, 2004

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Texas Public Finance Authority

Notice of Public Hearing

TEXAS PUBLIC FINANCE AUTHORITY CHARTER SCHOOL FINANCE CORPORATION TAX-EXEMPT CHARTER SCHOOL REVENUE BONDS (SCHOOL OF EXCELLENCE IN EDUCATION PROJECT) SERIES 2004-A

Notice is hereby given of a public hearing to be held on behalf of the Texas Public Finance Authority Charter School Finance Corporation (the "Corporation") on October 8, 2004 at noon in the Conference Room, Suite 411 at the Texas Public Finance Authority, William P. Clements State Office Building, 300 W. 15th St, Austin, Texas, 78701, with respect to the captioned bond issue (the "Bonds") to be issued in a principal amount not to exceed $8,825,000 by the Corporation. The proceeds of the Bonds will be loaned to the School of Excellence in Education, a Texas non-profit corporation, with 3 campuses located at (i) 5703 Blanco Road, San Antonio, Texas 78216, (ii) 802 Oblate, San Antonio, Texas 78216, including 803 Oblate Road, San Antonio, Texas 78216 and (iii) 1826 Basse Road, San Antonio, Texas 78213, including buildings at 1830 Basse Road, San Antonio, Texas 78213, 3711 Capitol Drive, San Antonio, Texas 78213 and 255 Venice, San Antonio, Texas 78213 (the "School"). The proceeds of the Bonds will be used for the purpose of (i) refinancing and financing certain costs of the acquisition, equipping, renovation and/or remodeling of certain educational facilities located at the School (the "Project"), (ii) funding a debt service reserve fund and (iii) paying a portion of the costs of issuance. The costs to be financed as part of the Project include the acquisition of land, site improvements, design, construction, furnishings, and equipment. The initial and exclusive operator of the Project and the educational facilities is and will be the School. The public hearing will be conducted by Judith Porras, General Counsel of the Texas Public Finance Authority, or her designee (the "Hearing Officer").

All interested persons are invited to attend such public hearing to express their views with respect to the above-described project and the Bonds. Questions or requests for additional information may be directed to the Hearing Officer (telephone: (512) 463-5681). Any interested persons unable to attend the hearing may submit their views in writing to the Hearing Officer prior to the date scheduled for the hearing. This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

TRD-200405705
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: September 15, 2004

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 9, 2004, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of Vantage Power Services, LP for Retail Electric Provider (REP) certification, Docket Number 30169 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 1, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30169.

TRD-200405665

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2004

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 7, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of AcademicPlanet, Incorporated, doing business as AP Telecommunications for a Service Provider Certificate of Operating Authority, Docket Number 30162 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State 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 September 29, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30162.

TRD-200405611
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 9, 2004

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 10, 2004, with the Public Utility Commission of Texas (commission), a notice of intent to file a long fun incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on or around September 21, 2004.

Docket Title and Number: Texas ALLTEL, Incorporated Application for Approval of LRIC Study to Implement New Service Offerings Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 30174.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30174. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 30174.

TRD-200405667
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2004

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on September 10, 2004, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long fun incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or around September 20, 2004.

Docket Title and Number: Application of Verizon Southwest for Approval of LRIC Study for ISDN PRI 2B Channel Transfer Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 30181.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 30181. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 30181.

TRD-200405668
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2004

Notice of Joint Agreement to Provide Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint agreement on August 31, 2004, seeking approval of two-way, optional, Extended Area Service (EAS), between Southwestern Bell Telephone, L.P., doing business as SBC Texas and the Frisco Exchange.

Project Title and Number: Joint Petition of Southwestern Bell Telephone, L.P., doing business as SBC Texas (SBC Texas), Governmental Representatives of the Frisco Exchange and Other Independent Telephone Companies to Provide Optional, Two-Way Extended Area Calling Service from the Frisco Exchange to the Dallas Metropolitan Exchange. Project Number 30146 before the Public Utility Commission of Texas.

The proposed plan is a two-way, optional, extended area service offering to which SBC Texas's residence and business local exchange customers within the Frisco Exchange will be able to call within the calling area for a monthly, flat rate.

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 November 23, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Project Number 30146.

TRD-200405664
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 14, 2004

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Council on Sex Offender Treatment

Correction of Error

In the September 3, 2004, issue of the *Texas Register* (29 TexReg 8531), the Council on Sex Offender Treatment adopted the repeal of 22 TAC §§810.1 - 810.9, 810.31 - 810.34, 810.61 - 810.64, 810.91, 810.92, 810.121, 810.122, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241, 810.242, 810.271 and 810.272; and new §§810.1 - 810.9, 810.31, 810.34, 810.61 - 810.67, 810.91, 810.92, 810.121, 810.122, 810.151 - 810.153, 810.181 - 810.183, 810.211, 810.241, 810.242, and 810.271 - 810.275, concerning the registration of sex offender treatment providers and the civil commitment of sexually violent predators.

Due to an error in the agency's rule submission, the word "make" was omitted from §810.92(d)(1) on page 8552, column 1. The first sentence should read:

"(1) Registrants shall make every effort possible...."

TRD-200405625

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Texas Department of Transportation

Public Notice--Public Hearing for Proposed North East Texas Regional Mobility Authority

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the proposed formation of the North East Texas Regional Mobility Authority (NETRMA).

On July 23, 2004 Gregg and Smith counties (Counties) filed a petition requesting authorization from the Texas Transportation Commission to form the NETRMA. As proposed, NETRMA would encompass the boundary of the Counties, and would be governed by a board of directors of up to seven members. Three of the board members would be appointed by the Gregg County Commissioners Court and three of the board members would be appointed by the Smith County Commissioners Court. In addition to the board members appointed by the Counties, the presiding officer of the board will be appointed by the Governor. NETRMA's initial project would be the continuation and completion of Loop 49 in Smith County as a four-lane divided highway, including an eastern corridor to extend into Gregg County. When completed, Loop 49 will span approximately 45-50 miles (depending on the eastern route) and link three separate NHS/Truck System highways (US 69, SH 31, IH 20).

Pursuant to Title 43, Texas Administrative Code, §26.12, the department will hold a public hearing on the date, time, and location indicated to receive public comments and assess the level of public support concerning the proposed NETRMA:

October 7, 2004, 6:00 p.m.

Tyler Area Office

15986 S. SH 155

Tyler, Texas 75702

All interested citizens are invited to attend the public hearing and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at the public hearing.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Delaina Mayers-Pipes (903) 510-9100 at least two business days prior to the hearing, so that appropriate arrangements can be made.

TRD-200405670
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 14, 2004

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Texas Workers' Compensation Commission

Correction of Error

In the September 3, 2004, issue of the *Texas Register* (29 TexReg 8567), the Texas Workers' Compensation Commission adopted 28 TAC §133.309. The following errors appeared in the rule adoption.

Page 8567, 1st sentence of preamble. There is an extra comma after "2004". The sentence should read as follows:

"The Texas Workers' Compensation Commission (the commission) adopts new rule §133.309, concerning Alternate Medical Necessity Dispute Resolution by Case Review Doctor (AMDR), with changes to the proposed text published in the March 5, 2004 issue of the *Texas Register* (29 TexReg 2187).

Page 8573, left column, 3rd full paragraph. There is an extra colon after "RESPONSE". The sentence should read as follows:

"RESPONSE: The commission disagrees."

Page 8574, left column, 3rd full paragraph. "TLC" should be spelled out and section symbols should precede "401.011, 408.003 and 408.021." The sentence should read as follows:

"COMMENT: Commenters opposed subsection (c)(1) because this violates legal standards in Texas for workers' compensation law that benefits are payable only for compensable injuries, Texas Labor Code §§401.011, 408.003 and 408.021."

Page 8577, left column, 1st paragraph, last sentence. The acronym, ADMR, is wrong. The sentence should read as follows:

"Based upon the above stated reasons, the commission disagrees with the recommendations to delete the requirement of the prescribing doctor to submit medical documentation for AMDR and to reimburse the prescribing doctor a cost for the production of these medical records and/or summary."

Page 8595, subsection (e)(2). A phrase was omitted at the end of the paragraph. The paragraph should read as follows:

"(2) A request by an injured employee shall be initiated by contacting the commission in any manner for assistance with the AMDR requirements. The injured employee's initial contact establishes the date used to determine timeliness. The injured employee is not required to request reconsideration under §133.304 of this title prior to requesting AMDR."

TRD-200405673

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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 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 representative vacancies:

Primary

* Public Health Care Facility

* Podiatrist

* Registered Nurse

Alternate

* Public Health Care Facility

* Dentist

* Pharmacist

* Podiatrist

* Registered Nurse

* Employer

* Employee

* General Public Representative 1

* 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 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. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

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*. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at 512-804-4850.

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-200405669
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 14, 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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