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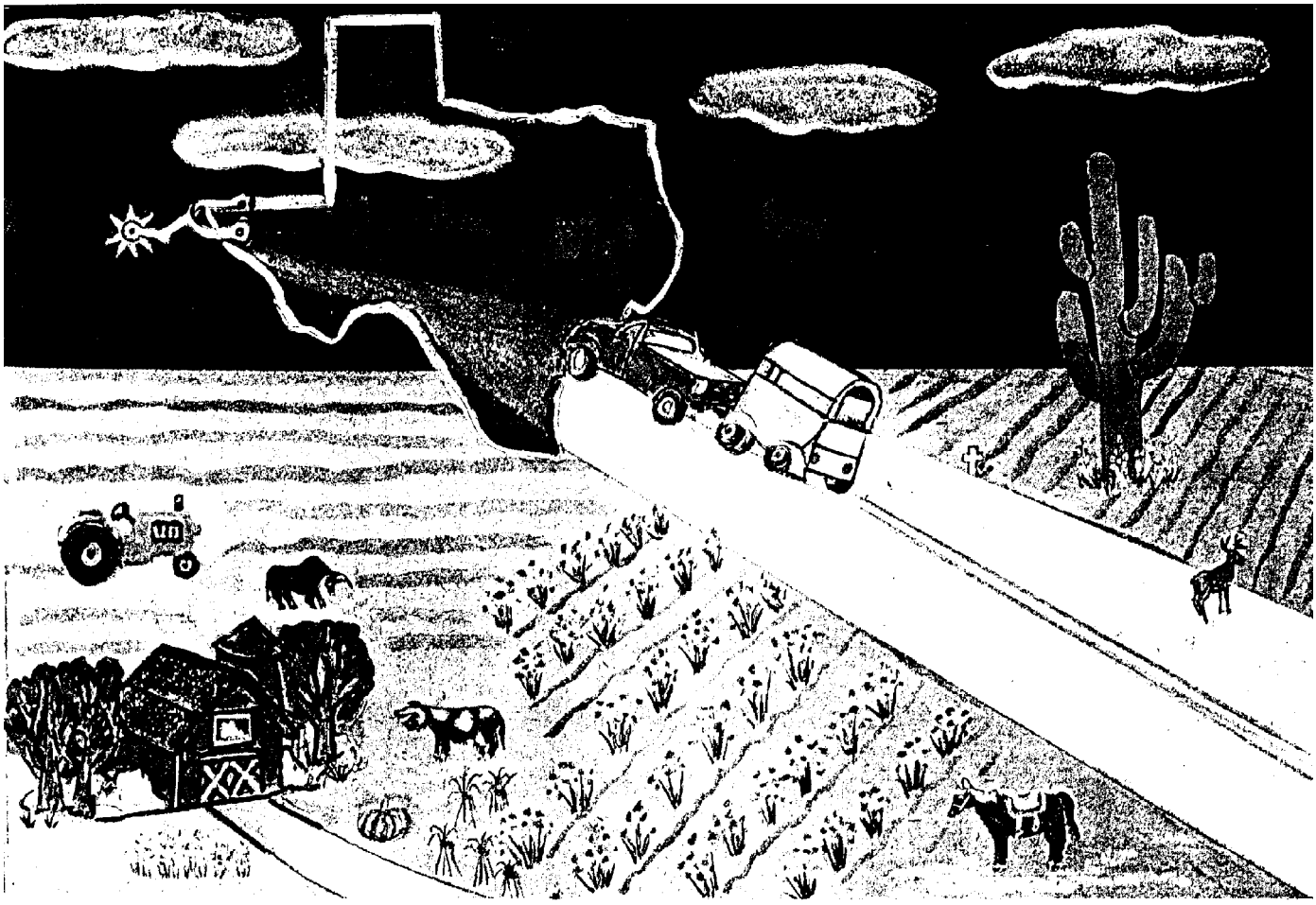

Ramiro Saldivar, 8th Grade

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

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

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GOVERNOR

ATTORNEY GENERAL

EMERGENCY RULES

PROPOSED RULES

Open Meetings

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

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

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

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

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

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

THE GOVERNOR

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

Appointments

Appointments for November 14, 2002

Appointed to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for terms to expire on December 31, 2007, Kenneth W. Earl of Orange (replacing Ursula Singleton of McAllen whose term expired), Jerome Kosoy, M.D. of Houston (replacing Robert Komorn of Houston whose term expired), Cherri Ann Robbins of San Antonio (replacing Carlos Oliveira of Laredo whose term expired).

Designated as presiding officer of the Texas State Council for Interstate Adult Offender Supervision, pursuant to HB 2494, 77th Legislature, for a term at the pleasure of the Governor, Raymond R. Parra of Austin.

Appointed to the Interstate Commission for Interstate Adult Offender Supervision, pursuant to HB 2494, 77th Legislature, for a term at the pleasure of the Governor, Katherine B. Winclker of Houston.

Appointed to the Texas State Council for Interstate Adult Offender Supervision, pursuant to HB 2494, 77th Legislature, for a term to expire on February 1, 2003, Linda L. White of Magnolia.

Appointed to the Texas State Council for Interstate Adult Offender Supervision, pursuant to HB 2494, 77th Legislature for a term to expire on February 1, 2005, Jim Sallans of Austin.

Appointed to the Texas State Council for Interstate Adult Offender Supervision, pursuant to HB 2494, 77th Legislature, for a term to expire on February 1, 2007, Katherine B. Winckler of Houston.

Appointments for November 15, 2002

Appointed to the 2003 Texas Inaugural Committee for terms at the pleasure of the Governor, Pamela Pitzer Willeford of Austin (Ms. Willeford will serve as Chair), James Huffines of Austin (Mr. Huffines will serve as Vice-Chair).

Rick Perry, Governor

TRD-200207488

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THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0626

The Honorable Edmund Kuempel, Chair, State Recreational Resources Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Validity of a proposed ethics ordinance of the City of Seguin (Request No. 0626-JC)

Briefs requested by December 15, 2002

RQ-0627

Ms. Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942

Re: Authority of the Board of Architectural Examiners to require its registrants to report criminal convictions, and related questions (Request No. 0627-JC)

Briefs requested by December 18, 2002

RQ-0628

The Honorable David Aken, San Patricio County Attorney, San Patricio County Courthouse, Room 102, Sinton, Texas 78387

Re: Whether a municipal judge may examine witnesses in a case in which the state is represented by counsel (Request No. 0628-JC)

Briefs requested by December 18, 2002

RQ-0629

The Honorable Bruce Isaacks, Denton County Criminal District Attorney, 1450 East McKinney, Suite 3100, Denton, Texas 76202

Re: Disposition of funds generated by the inmate telephone fund in the county jail (Request No. 0629-JC)

Briefs requested by December 18, 2002

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

TRD-200207572
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: November 20, 2002

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for Pest Management Zone 3 (Zone 3), Area 1 and Area 2, and Pest Management Zone 5 (Zone 5). A prior emergency amendment filed by the department on October 31, 2002, granted an extension until November 14, 2002 for Zone 3, Area 1. Zone 3, Area 1 includes Jackson, Matagorda and that portion of Wharton County west of the Colorado River, Zone 3, Area 2 includes Austin, Brazoria, and Fort Bend and that portion of Wharton County east of the Colorado River and Zone 5 which includes Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington. That emergency amendment is now being amended to extend the cotton destruction deadline for the areas covered by Pest Management Zone 3 (Zone 3), Area 1, Zone 3, Area 2 and Zone 5. The department is acting on behalf of cotton farmers in counties included in Zone 3, Area 1, Zone 3, Area 2 and Zone 5.

The current cotton destruction deadline for Zone 3, Area 1 and Zone 3, Area 2 and Zone 5 is midnight November 14, 2002, which will be extended through November 28, 2002. The department believes that changing the cotton destruction date is both necessary and appropriate. This extension is effective only for the 2002 crop year.

Excessive amounts of rainfall have continued across the cotton growing areas of these portions of Zone 3, Areas 1 and 2, and Zone 5 preventing cotton producers from completing harvest and destruction of hostable cotton in a timely manner. A failure to act to extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers in the counties in this zone and the state's economy.

The emergency amendment to §20.22(a) changes the date for cotton stalk destruction for Austin, Brazoria, Wharton and Fort Bend counties located in Zone 3, Area 1, and Zone 3, Area 2; and Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington counties located in Zone 5 from November 14 to November 28, 2002.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall periodically be performed to prevent the presence of fruiting structures. Destruction of all cotton plants in Zones 9 and 10 shall be accomplished by shredding and plowing and completely burying the stalk. Soil should be tilled to a depth of 2 or more inches in Zone 9 and to a depth of 6 or more inches in Zone 10.

Figure: 4 TAC §20.22 (a)

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

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

Filed with the Office of the Secretary of State on November 14, 2002.

TRD-200207471
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective Date: November 14, 2002
Expiration Date: November 30, 2002
For further information, please call: (512) 463-4075

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PROPOSED RULES

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

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

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1004

The Texas Credit Union Commission proposes amendments to §91.1004, relating to conversion of charter. The amendments will clarify that a credit union may convert to another type of financial institution under either a state or federal charter.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule amendment.

Mr. Feeney has also determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of enforcing the rule will be a clearer understanding that credit unions have the option of converting to either a state or federally chartered financial institution. There is no anticipated effect on small businesses as a result of adopting the new amendment. There is no economic cost anticipated to entities that are required to comply with the new amendment as a result of its future adoption.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this proposed rule are Texas Finance Code §§122.201, 122.202, and 122.203.

§91.1004. Conversion of Charter.

(a) Change of charter. A credit union authorized to do business under the Act may convert to a federal credit union or another type of financial institution upon completion of the following requirements:

(1) the proposal for charter conversion is approved by a majority vote of the board of directors;

(2) the credit union provides the commissioner with notice of the approval by the board of directors within five days after the approval;

(3) evidence is furnished to the commissioner confirming that the National Credit Union Administration is agreeable to the proposal for conversion;

(4) the conversion proposal is approved by an affirmative vote of a majority of the members of the credit union voting at a meeting called for that purpose; and

(5) a state or federal charter is issued to the credit union and evidence is furnished to the commissioner confirming that the credit union has met all conversion requirements of the applicable state or federal regulator [~~National Credit Union Administration~~].

(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 November 18, 2002.

TRD-200207492
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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CHAPTER 93. ADMINISTRATIVE PROCEEDINGS

SUBCHAPTER B. GENERAL RULES

7 TAC §93.201

The Texas Credit Union Commission proposes amendments to §93.201, relating to party status. The amendment would specifically provide that a party in a contested case is entitled to an opportunity for hearing after reasonable notice of not less than 10 days. The amendment also clarifies that a party may respond and present evidence and argument on each issue involved in a case.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission

has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be that a party will be afforded an opportunity for a fair and expeditious presentation of the relevant issues in a contested case. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this proposed rule are Texas Finance Code, §§122.006, 122.011, 122.153, 122.259, and 126.105.

§93.201. Party Status.

Party status will be conferred on persons or entities with a legal right, duty, privilege, power or current economic interest that may be directly affected by the outcome of the case. In a contested case, each party is entitled to an opportunity for hearing after reasonable notice of not less than 10 days and to respond and present evidence and argument on each issue involved in the case.

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 November 18, 2002.

TRD-200207495
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.212

The Texas Credit Union Commission proposes amendments to §93.212, relating to proposal for decision. The amendment would specifically provide that the Administrative Law Judge (ALJ) will serve copies of the proposal for decision (PFD) and proposed final order on all parties of record within 30 days after conclusion of the evidence in the case. The amendment also clarifies that a ALJ shall not submit the PFD and proposed final order to the commissioner until after the parties have had an opportunity to file exceptions and briefs on the PFD and proposed order.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be that the contested case will be adjudicated in an efficient and timely manner. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.006, 122.011, 122.153, 122.259, and 126.105.

§93.212. Proposal for Decision.

(a) Following the hearing the ALJ shall review the evidence and testimony, and prepare a PFD containing a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary for the proposed decision. The ALJ shall also prepare a proposed final order for the commissioner to sign adopting the proposed decision. The [~~Upon completion, the~~] ALJ shall serve copies of the PFD and proposed final order on all parties of record within 30 days after conclusion of the evidence in the case and give each adversely affected party an opportunity to file exceptions and present briefs. If a party files exceptions or presents briefs, the ALJ shall give an opportunity to other parties to file replies to the exceptions or briefs. Unless otherwise indicated, exceptions, replies to exceptions, and related briefs must be filed within deadlines established by the ALJ. The ALJ may amend the PFD and proposed final order in response to the exceptions, replies, or briefs submitted. If the ALJ makes substantive revisions, the ALJ shall circulate the amended PFD and proposed final order to the parties for additional exceptions and briefs before submitting the PFD and proposed final order to the Commissioner.

(b) After the ALJ has circulated the PFD and proposed order to the parties and the parties have had an opportunity to file exceptions and briefs in the manner provided in subsection (a) of this section, the ALJ shall submit the PFD and proposed order together with all materials listed in Government Code Section 2001.60, to the commissioner for review. No additional briefs may be submitted after the case is under submission to the commissioner for decision unless requested by the commissioner. The commissioner may:

(1) Adopt the PFD and proposed final order, in whole or in part;

(2) Modify and adopt the PFD and proposed final order, in whole or in part;

(3) Decline to adopt the PFD and proposed final order, in whole or in part;

(4) Remand the proceedings for further examination by the ALJ, including for the limited purpose of receiving additional briefing or evidence from the parties on specific issues; or

(5) Take another lawful and appropriate action with regard to the case.

(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 November 18, 2002.

TRD-200207494
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.213

The Texas Credit Union Commission proposes new §93.213, relating to representation at a hearing. The purpose of the proposed rule is to prescribe who may represent a party at a SOAH hearing. The proposed rule also provides that a person appearing in a representing capacity may be required to present proper evidence of authority, and is required to observe proper decorum during the hearing.

The new rule is proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed rule.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed new rule is in effect, the public benefits anticipated as a result of enforcing the rule will be that a party to a contested case is informed that it is not mandated that the party be represented by an attorney. There is no anticipated effect on small businesses as a result of adopting the new rule. There is no economic cost anticipated to credit unions for comply with the new rule if adopted.

Written comments on the proposal must be submitted within 45 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The new rule is proposed under the provisions of §15.402 of the Texas Finance Code that is interpreted to authorize the Credit Union Commission to adopt reasonable rules necessary for administering Subtitle D, Title 3, Texas Finance Code (Texas Credit Union Act).

The specific sections affected by this proposed rule are Texas Finance Code §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.213. Appearances and Representation.

A party may be represented by an attorney or an officer, partner, or full time employee may represent a corporation, partnership, association, or firm in a hearing even if that person is not a licensed attorney, if that person observes proper decorum and the instructions of the ALJ. The ALJ may require any person appearing in a representative capacity to provide such evidence of authority as the ALJ deems necessary.

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 November 18, 2002.

TRD-200207493
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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SUBCHAPTER C. APPEALS OF PRELIMINARY DETERMINATIONS ON APPLICATIONS

7 TAC §93.301

The Texas Credit Union Commission proposes amendments to §93.301, relating to finality and request for SOAH hearing. The amendment would clarify that a preliminary decision of the commissioner is withdrawn if a timely written request for hearing is filed by a party.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will eliminate any confusion as to the disposition of a preliminary decision in a contested case regarding an application. There is no anticipated

effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.006, 122.011, and 122.153.

§93.301. Finality and Request for SOAH Hearing.

Except as provided otherwise by this chapter, the preliminary decision of the commissioner becomes final 20 days from the date of service, unless prior thereto, an applicant or protestant files with the commissioner a written request for hearing. In the event that a timely written request for hearing is filed by any party, the commissioner's preliminary decision is withdrawn. The commissioner may, at the commissioner's sole discretion, refer any matter to SOAH for hearing prior to entering a preliminary decision [~~when a hearing is requested by a party, whether or not it has been referred to ADR~~].

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 November 18, 2002.

TRD-200207496
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.303

The Texas Credit Union Commission proposes amendments to §93.303, relating to hearings of applications to incorporate, amend bylaws, or merge or consolidate. The amendments would clarify the burden of proof requirements for the various parties in a contested case regarding an application. The amendments would also define the term "unreasonable harm" as it relates to an overlap of an existing credit union's field of membership.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be consistent application of the burden of proof for the varies parties in a contested case. In addition, a protesting credit union will clearly understate the level of harm it must prove to avoid having its field of membership overlapped. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.006, 122.011, and 122.153.

§93.303. Hearings of Applications to Incorporate, Amend Bylaws, or Merge or Consolidate.

(a) (No change.)

(b) The ALJ shall consider this information along with thetestimony and documentary evidence presented [~~developed~~] at the hearing in preparing a proposal for decision.

(c) Burden of Proof for Unprotested Applications. The applicant must prove each of the statutory requirements for approval [~~establish~~] by a preponderance of the evidence [~~all statutory criteria~~].

(d) Burden of Proof for Protested Applications. The applicant must prove each of the statutory requirements for approval [~~establish~~] by a preponderance of the evidence [~~the criteria set forth in the applicable statutes and rules~~]. In cases in which field of membership is at issue, the protestant must establish by a preponderance of the evidence that overlapping fields of membership will unreasonably harm the protestant. For the purposes of this section, to constitute "unreasonable harm" an overlap must threaten the protestant's welfare and stability or its financial viability to such an extent that it would adversely impact its safety and soundness as a credit union.

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 November 18, 2002.

TRD-200207497
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.304

The Texas Credit Union Commission proposes amendments to §93.304 relating to appeals of applications for certificates of authority. The amendment corrects a Texas Administrative Code

cite that changes as a result of the Credit Union Commission adopting new rule §91.210.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be that the correct Texas Administrative Code cite will be reflected in the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions for comply with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amended rule is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §122.013.

§93.304. Appeals of Applications for Certificates of Authority.

If ADR is not utilized or fails to resolve the controversy, whether the application is unprotested or protested, the applicant for a certificate of authority must prove [~~establish~~] by a preponderance of the evidence the requirements [~~criteria~~] set forth in §91.210 [~~§91.211(c)~~] of this title (relating to Application for a Certificate of Authority to Do Business in the State of Texas).

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 November 18, 2002.

TRD-200207504
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.305

The Texas Credit Union Commission proposes amendments to §93.305 relating to appeals of all other applications for which no specific procedures are provided by this title. The amendment clarifies the burden proof the applicant must prove during the hearing.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be consistent interpretation of the burden of proof standard for all applicants. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions for comply with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amended rule is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.201, 122.202, and 122.203.

§93.305. Appeals of All Other Applications for Which No Specific Procedure is Provided by this Title.

If ADR is not utilized or fails to resolve the controversy, whether the application is protested or unprotested, the applicant has the burden to prove each of the applicable statutory requirements for approval by a preponderance of the evidence [~~of proof~~].

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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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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SUBCHAPTER D. APPEALS OF CEASE AND DESIST ORDERS AND ORDERS OF REMOVAL

7 TAC §93.401

The Texas Credit Union Commission proposes amendments to §93.401 relating to appeals of cease and desist orders and orders of removal. The amendment clarifies the Department must present evidence that is sufficient to raise a presumption of fact or to establish the fact in question unless rebutted.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be consistent interpretation of the burden of proof standard for the department in a contested case involving a cease and desist or removal order. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions for comply with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amended rule is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.257 and 122.259.

§93.401. Appeals of Cease and Desist Orders and Orders of Removal.

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

(d) At the hearing, the commissioner has the burden to prove a prima facie case by a preponderance of the evidence, based upon reasonable inferences drawn from the evidence presented, that the violations or unsafe or unsound practices [~~that~~] justify the cease and desist order or order of removal.

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 November 18, 2002.

TRD-200207498
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.402

The Texas Credit Union Commission proposes amendments to §93.402 relating to stays. The amendment make nonsubstantive changes to the rule.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be a clear and grammatically rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions for comply with the amended rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amended rule is proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §126.105.

§93.402. Stays.

Where an order by its terms, by statute or by these rules will become effective before a hearing can be held, any aggrieved party who has filed a timely request for hearing under this chapter may file a written request with the Commissioner to stay the effectiveness of part or all of such order until the matter has been heard and a final decision issued. The Commissioner may grant a stay where the respondent has adequately demonstrated that the respondent has a reasonable defense which might result in his prevailing on the merits at the hearing; the respondent will be irreparably injured in the absence of the stay; the stay would not substantially or irreparably harm other interested persons; and the stay would not jeopardize the public interest or contravene public policy.

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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TRD-200207499
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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SUBCHAPTER F. APPEAL OF COMMISSIONER'S FINAL DETERMINATION TO THE COMMISSION

7 TAC §93.601

The Texas Credit Union Commission proposes amendments to §93.601, relating to motions for appeal to the commission. The amendments modifies the timeframe for filing a motion for appeal to comply with certain provisions of the Texas Finance Code. The amendments also imposes a new requirement for the commission to act on a motion for appeal within 60 days of receipt.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be an expeditious handling of all motions of appeal that are consistent with the statutes. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.601. Motion for Appeal to the Commission.

(a) A motion for appeal to the Commission must be filed with the Commissioner within sixty [~~ten~~] days of service of the Commissioner's final determination.

(b) (No change.)

(c) The Commission shall act on a motion for appeal not later than sixty days after receipt of the motion for appeal.

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 November 18, 2002.

TRD-200207500
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.602

The Texas Credit Union Commission proposes amendments to §93.602, relating to decisions by the commission. The amendments clarify the matters that may be considered by the Commission which must be based upon the testimony and other evidence in the hearing record. The amendments also authorize the commission to take any action, in regards to the motion for appeal, that is just and reasonable and as permitted by applicable law.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be a clear understanding of the responsibilities and authorities of the Commission in regards to a motion for appeal. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.602. Decision by the Commission.

The commission shall consider the questions raised in the motion for appeal and may also consider such additional matters pertinent to the appeal as it may determine, [~~any aspect of the case~~] whether or not included in the motion for appeal. Decisions by the commission must be based on testimony and other evidence in [~~solely on~~] the hearing record. The commission may adopt or decline to adopt, with or without changes, all or part of the commissioner's decision or the ALJ's proposed for decision and the underlying findings of fact and conclusions of law. The commission may remand the proceeding for further

consideration by the commissioner with or without reopening the hearing. The commission may take any additional actions it considers to be just and reasonable, as permitted by law.

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 November 18, 2002.

TRD-200207501
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.603

The Texas Credit Union Commission proposes amendments to §93.603, relating to oral arguments before the commission. The amendments clarify that the commission may grant or deny a motion for oral argument and, if granted, may impose reasonable time limits on the such presentations.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be a clearer understanding of the authorities of the Commission in regards to a motion for oral arguments. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.603. Oral Arguments before the Commission.

The Commission will not entertain oral argument unless oral argument is granted on a written motion of a party. A written request for oral argument must be received by the Commissioner at least 15 days before the scheduled commission meeting and state the length of time the party seeks. The commission, in its discretion, may grant or deny the request. If granted, the amount of time allotted and the issues on which oral argument is allowed are with the commission's discretion. The commission may deny the request for oral argument but request that the parties be present at the meeting at which the case is to be considered to address any questions that commission members may have.

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 November 18, 2002.

TRD-200207502
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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7 TAC §93.604

The Texas Credit Union Commission proposes amendments to §93.604, relating to a motion for rehearing. The amendments clarify that the commission is not considering a motion for a new hearing but rather a motion for a reconsideration of its previous decision.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002, (27 TexReg 7199) for the purpose of accepting public comment. No comments have been received. However, the Commission has determined from its review of Chapter 93 that a need exists for this proposed amendment.

Harold Feeney, Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be a clearer understanding of the matters to be actually considered by the Commission. There is no anticipated effect on small businesses as a result of adopting the amendments. There is no economic cost anticipated to credit unions for comply with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Harold Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendments are proposed under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by this rule are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

§93.604. Motion for Reconsideration [~~Rehearing~~].

(a) A party may file a motion for reconsideration [~~rehearing~~] in accordance with the procedures of Administrative Procedures Act §2001.146.

(b) A party may file a motion for reconsideration [~~rehearing~~] with the commission not later than 20 days after the date on which the party or the party's attorney was notified of the final decision of the commission. A reply to a motion for reconsideration [~~hearing~~] must be filed not later than the 30th day after the party or party's attorney was notified of the final decision of the commission. The commission shall act on a timely filed motion for reconsideration [~~rehearing~~] not later than the 45th day after the date on which the party or the party's attorney was notified of the final decision. A timely filed motion for reconsideration [~~rehearing~~] is overruled by operation of law if the commission does not act on it within the 45 day period or another period that is ordered by the commission upon the agreement of the parties.

(c) The Commission by written order may shorten the times for filing motions for reconsideration [~~rehearing~~] and replies and for commission action or overruling by operation of law, provided all parties agree in writing to the modifications.

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 November 18, 2002.

TRD-200207503
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 837-9236

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION
SUBCHAPTER E. ADMINISTRATION

16 TAC §60.200

The Texas Department of Licensing and Regulation (the Department) proposes new §60.200 concerning assignment and use of agency vehicles. The new section is necessary to comply with the provisions of Government Code, §2171.045, which requires each state agency to adopt rules relating to the assignment and use of the agency's vehicles.

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

Mr. Kadas has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the discharge of the agency's duty to implement the fleet vehicle management plan required by Government Code, Chapter 2171.

There will be no effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Chris Kadas, General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail at chris.kadas@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The rule is proposed under Government Code, §2171.1045, which requires the Department to adopt rules relating to the assignment and use of the agency's vehicles.

The statutory provisions affected by the proposal are those set forth in Government Code, Chapter 2171 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§60.200. Assignment and Use of Agency Vehicles.

(a) Each agency vehicle, with the exception of a vehicle assigned to a field employee, shall be assigned to the agency motor pool and be available for checkout.

(b) The agency may assign a vehicle to an individual administrative or executive employee on a regular basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

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 November 13, 2002.

TRD-200207414
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-7348

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CHAPTER 68. ARCHITECTURAL BARRIERS

16 TAC §68.74

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at Title 16 Texas Administrative Code §68.74 regarding the Architectural Barriers program. The new rule provides procedures for Registered Accessibility Specialists (RAS) registration renewals in the Architectural Barriers program.

This rule is necessary to establish procedural requirements for RAS registration renewals under the Architectural Barriers program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rule is in effect there will be no cost to state or 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 an

increase in the availability of registered accessibility specialists. There will be no new economic cost to those required to comply with the proposal because the proposed rule simply establishes a procedure for registration renewal.

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.*

New §68.74 is proposed under Texas Civil Statutes, Article 9102, Section 5 which authorizes the Department to exercise all necessary powers to require compliance with the Department's rules and regulations and modifications thereof and substitutions therefor 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 Civil Statutes, Article 9102 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§68.74. 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 registrant shall not perform work requiring registration under Texas Civil Statutes, Article 9102 with an expired registration.

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 November 13, 2002.

TRD-200207412
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-7348

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CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

16 TAC §71.25

The Texas Department of Licensing and Regulation ("Department" proposes a new rule at Title 16 Texas Administrative Code §71.25 regarding the Vehicle Protection Product Warranty program. The new rule provides procedures for registration renewals in the Vehicle Protection Product Warranty program.

This rule is necessary to establish procedural requirements for license renewals under the Vehicle Protection Product Warranty program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rule is in effect there will be no cost to state or 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 an increase in the availability of vehicle protection product warrantors. There will be no new economic cost to those required to comply with the proposal because the proposed rule simply establishes a procedure for registration renewal.

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*.

New §71.25 is proposed under Texas Civil Statutes, Article 9035, §4 which authorizes the Department to adopt rules as necessary to implement Article 9035 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 Civil Statutes, Article 9035 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§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 Civil Statutes, Article 9035 with an expired registration.

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 November 13, 2002.

TRD-200207413
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-7348

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CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.10, 74.20, 74.30, 74.50, 74.55, 74.65, 74.70, 74.75, 74.80, 74.90, 74.100

The Texas Department of Licensing and Regulation (the Department) proposes amendments to §§74.10, 74.20.74.30, 74.50, 74.55, 74.65, 74.70, 74.75, 74.80, 74.90 and 74.100 concerning

the certification of Elevators, Escalators, and Related Equipment program.

The amendments to §74.10 add and change definitions of keywords used throughout this chapter for clarity.

The amendments to §74.20 clarify Inspector registration requirements by separating initial registration and renewal registration requirements; and removes language prohibiting inspectors from performing inspections prior to attending the orientation session which will allow the Department to conduct orientation sessions on a schedule more convenient to the Inspectors and the Department.

The amendment to §74.30 clarifies exemption of equipment regulated by a municipal program which aligns the rule language with that of the statute.

The amendments to §74.50 clarify filing requirements for building owners to obtain a certificate of compliance which will clarify for the owner the reasons for their reporting requirements; and add reporting requirements for equipment placed out-of-service or converted to or from a material lift in order to specify the method for notifying the Department when changes to equipment render it no longer subject to or no longer exempt from regulation.

The amendments to §74.55 add inspection reporting requirements for new, altered, and existing equipment; and clarify Inspector's reporting responsibilities to the building owner and Department. These amendments will clarify and simplify Inspector reporting requirements regarding annual inspections and unsafe equipment.

The amendments to §74.65 clarify the number of and terms of advisory board members which simplifies information regarding the advisory board.

The amendments to §74.70 clarify the responsibilities of the building owner regarding annual inspections of new or altered equipment and the reporting of unsafe equipment and accidents; add responsibilities for arranging and completing inspections of existing equipment; and address building owners obligation to obtain a Certificate of Compliance from the Department to verify compliance with the Act and authorization to operate the equipment.

The amendments to §74.75 clarify the responsibilities of the Inspector regarding inspection procedures, applicable edition of Inspector's Manuals, Department forms, and decals; eliminate annual test tag requirements; add costs for Inspectors' equipment, relocated from §74.80 and clarify and reduce these costs to allow inspectors to purchase wire rope and lead seals separate from test tags; and remove prohibition against transferring test tags, crimping tool and tool number to another Inspector. The justification for changes to §74.75 is to simplify the Inspector's responsibilities regarding inspection, decal, and test tag procedures, so that fewer tags will need to be purchased by the Inspector. Modification of test tag requirements will not impact safety, as the same information is included on the Certificate of Compliance, which must be posted in the elevator machine room.

The amendments to §74.80 clarify filing fees for a Certificate of Compliance; add a fee for a revised or duplicate Inspector Registration Card or Certificate of Compliance which will allow the Department to recover costs for this service; remove costs for Inspectors' equipment, relocated to §74.75; clarify application of the waiver/delay fee; and remove the higher education fee exemption because it is stated in the statute.

The amendments to §74.90 clarify language regarding imposing sanctions or penalties for violations of the Act or rules and update statutory and rule cites.

The amendments to §74.100 clarify the technical standards adopted by the Department, and remove redundant reference to applicable edition of Inspector's Manuals, already cited in §74.75. The justification for these changes is to set the edition of the technical standards cited to the latest edition allowed by the Statute, consistent with Attorney General Opinion No. JC-0510.

George Ferrie, Director, Code Review and Inspections Division, has determined that for the first five-year period these rules are in effect, there will be minimal fiscal implications for state government and no fiscal implications on local government.

Mr. Ferrie also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing these sections will be clarification of requirements resulting in more consistent application of inspection procedures and standards, and in improved safety and enforcement.

The anticipated economic effect on small businesses or other persons who are required to comply with these sections as proposed will be minimal. The cost of compliance will be minimal.

Comments on the proposal may be submitted to George Ferrie, Director, Code Review and Inspections, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 463-1376, or by e-mail; george.ferrie@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Health and Safety Code Annotated, Chapter 754 and Texas Occupations Code, Chapter 51, §51.203 which authorizes the Department to adopt rules as necessary to implement this Code and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code Annotated, Chapter 754 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§74.10. Definitions.

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

(1) The Act -- Texas Health and Safety Code Annotated, Chapter 754, Elevators, Escalators, and Related Equipment [~~(Vernon 1997)~~].

(2) Acceptance Inspection -- The initial inspection and tests of new or altered equipment per ASME A17.1-1994, Part X, performed at the completion of the initial installation or alteration and before the equipment is placed in service for public use.

(3) Accident -- An event or incident involving equipment that results in serious bodily injury or death to a person and/or damage to the equipment; or, an event or incident involving a malfunction of equipment that may indicate that the equipment is dangerous.

(4) Annual Inspection -- Routine inspection and tests plus additional detailed examination of the operation of equipment per ASME A17.1-1994, Part X , at yearly intervals, and witnessed by an inspector to check for compliance with applicable ASME Code requirements.

(5) ASME -- American Society of Mechanical Engineers, a nationally recognized professional engineering society.

(6) ASME A17.1-1994 -- The ASME A17.1-1993 "Safety Code for Elevators and Escalators" and A17.1a-1994 Addenda.

(7) ASME A17.2-1994 -- The ASME A17.2.1-1993 and A17.2.1a-1994 Addenda, ASME A17.2.2-1994, and ASME A17.2.3-1994, Inspectors' Manuals.

(8) ASME A17.3-1994 -- The ASME A17.3-1993, "Safety Code for Existing Elevators and Escalators" and A17.3a-1994 Addenda.

(9) Building Owner -- The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(10) Delay -- Postponement of compliance with a requirement of the applicable ASME Safety Codes, for a specific period of time.

(11) Equipment -- An elevator, escalator, moving walk, wheelchair or platform lift, stairway chairlift, or related equipment as defined in the Act.

(12) Industrial Facility -- For purposes of this chapter, a facility used for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair, processing, or power generation operations, or similar functions, in which use of the equipment is limited to employees and other authorized personnel and their tools and equipment only, and which is not open to the public.

(13) Inspection report -- A Department approved form used by the inspector to report the inspection results of all equipment in one building. The "inspection date" on this form is the date of completion of the last inspection in one building.

(14) Serious bodily injury -- Impairment to bodily functions or serious dysfunction of any bodily organ or part, requiring medical attention.

(15) Unsafe elevator or escalator -- A condition which exists due to a design, mechanical, structural, or electrical defect which presents a risk of serious bodily injury

(16) Waiver -- Permanent deferral of compliance with a requirement of the applicable ASME Safety Codes.

[(2) Delay -- Suspension of compliance with American Society of Mechanical Engineers (ASME) Safety Codes for a specific period of time.]

[(3) Inspection report -- Consists of the Owner's Cover Sheet and one Department approved Inspector's Report per elevator, escalator, or related equipment in a building.]

[(4) Inspector -- An inspector who is registered with the Department and certified as an ASME QEI-1 by an organization accredited by the American Society of Mechanical Engineers (ASME).]

[(5) QEI -- Qualified Elevator Inspector.]

[(6) Serious injury -- serious impairment to bodily functions or serious dysfunction of any bodily organ or part.]

[(7) Unsafe elevator or escalator -- A condition which exists due to a design, mechanical, structural, or electrical defect which presents a risk of serious injury.]

[(8) Waiver -- Indefinite suspension of compliance with ASME, Safety Codes.]

[(9) Yearly or annual inspection -- routine inspection and test plus additional detailed examination and operation of an elevator, or related equipment per ASME A17.1, part 10, at yearly intervals, witnessed by an inspector to check for compliance with applicable Code requirements.]

§74.20. Inspector [QEI] Registration Requirements.

(a) An individual registering with the Department as an inspector for the first time [QEI's] shall submit a completed application for registration [or renewal] on the forms provided by the Department. [A completed application shall include as a minimum]

(1) A completed application shall include:

(A) the registration form with all blanks completed;

(B) [(2)] the applicable fee referenced in §74.80 of this title (relating to Fees); and

(C) [(3)] a copy of both sides of the ASME QEI-1 [qualification of] elevator safety inspector [(QEI)] certification card.

(2) [(4)]Inspectors [QEI's] must attend an orientation session conducted by the Department regarding Department forms and inspection procedures [prior to performing inspections required by the Department].

(b) The renewal registration shall be on the anniversary of the inspector's [QEI's] registration. Inspectors shall submit a completed application for renewal on forms provided by the Department.

(1) A completed application shall include:

(A) the renewal form with all blanks completed;

(B) the applicable fee referenced in ?§74.80 of this title (relating to Fees); and

(C) a copy of both sides of the ASME QEI-1 elevator safety inspector certification card.

(2) [(1)] Inspectors shall attend an annual seminar conducted by the Department as part of the requirements to renew their registration.

(3) [(2)] Inspectors have a 15-day grace period to renew their registration after the expiration date of the previous registration. An inspector may conduct inspections during the grace period.

(c) The inspector shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

§74.30. Exemptions.

This chapter does not apply to buildings owned or operated by the federal government or to [elevators, escalators, and related] equipment regulated by a municipal inspection and certification program approved under §74.65 (b) [(a)] of this title (relating to Advisory Board).

§74.50. Reporting Requirements-Building Owner.

(a) To obtain a Certificate of Compliance, the [The] building owner must submit to the Department within 60 days of completing all inspections, the following items:

(1) the application for Certificate of Compliance;

(2) [(1)] a copy of the inspection report [inspector's report] for all equipment [each unit] in one building;

(3) [(2)] written documentation to verify that all violations of the applicable ASME code, cited on the inspection report, have been corrected or are under contract to be corrected; [information relating to when and how the violations will be corrected; or]

[(3) delay and/or waiver application form; and,]

(4) any application(s) for Delay or Waiver, if applicable; and,

(5) [(4)] all applicable fees.

(b) The building owner must submit the status of all delays to the Department, in writing, on or before the expiration of each delay granted.

(c) The Owner shall notify the Department, in writing and within 30 days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in A17.1-1994, "installation placed out of service."

(d) The owner shall notify the Department, in writing and within 30 days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with A17.1-1994, Section XIV.

(e) The owner shall notify the Department, in writing and within 30 days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with A17.1-1994.

§74.55. Reporting Requirements-Inspector.

(a) For new installations or alterations, the inspector [Inspectors] shall provide a copy of the Elevator Equipment Form [Inspector's Summary Report] to the Department within ten working days after completing all inspections in one building.

(b) For annual inspections, the inspector shall notify the Department of the completion of the inspection by a method approved by the Department, within ten working days after completing all inspections in one building.

(c) [(b)] The inspector shall clearly note on the inspection report any [attach to Inspector's Summary Report a copy of the Inspector's Report for any elevator, escalator or related] equipment found to be unsafe , and shall report it immediately by submitting a copy of the report to the building owner and to the Department.

[(c) Any elevator, escalator or related equipment found to be unsafe shall be reported immediately to the building owner and the Department.]

(d) Inspectors shall submit a copy of the inspection report [Inspector's Report] to the building owner within ten working days from the inspection date.

§74.65. Advisory Board.

(a) The board is comprised of 13 members and shall consist of those regulated industry members and consumers of services members specified in the Act and Government Code, Chapter 2110. Board members will serve for staggered three year terms with two regulated industry positions and two consumer positions expiring in each of the first, second, and third years and one consumer position expiring in the third year. Terms shall expire November 1 of the third year of the member's term.

(b) [(a)] If with the advice of the Elevator Advisory Board, the Executive Director determines that the standards of inspection and certification of a municipal inspection and certification [elevator, escalator and related equipment] program are no less stringent than those contained in the Act, the municipal ordinance shall apply.

(c) [(b)] Board meetings may be called by the Executive Director or the presiding officer. [Meetings in excess of twice each calendar year may be authorized by the Executive Director.]

[(c) The board shall consist of those regulated industry members and consumers of services members specified in the Act.]

[(d) Board members will serve for staggered three year terms with two regulated industry positions and two consumer positions expiring in each of the first and second years and one of each position expiring in the third year.]

[(e) Terms of board members shall expire November 1of each year.]

§74.70. Responsibilities of the Building Owner.

(a) The building owner must contract with, or employ an inspector [ASME QEI-1 who is registered with the Department] to perform inspections in accordance with §74.75 of this title (relating to Responsibilities of the Inspector) and §74.100 of this title (relating to Technical Requirements).

(b) The owner of the building in which [an elevator, escalator or related] equipment is located shall have such equipment inspected yearly.

(c) The [Within 60 days of the inspection, the] building owner shall have all inspections of [elevators, escalators, or related] equipment in each [that] building completed within 60 days of the initial inspection. If a building owner is unable through reasonable and diligent [practical] effort to complete inspections within the required 60-day period, a written request for an extension must be received and granted by the Department to allow the building owner a later inspection completion date.

[(d) Unless the building owner is granted a Department waiver, the building owner must remedy all deficiencies noted on the annual inspection report or submit information documenting when the violations will be corrected, within:]

[(1) 60 days of completing all inspections; or]

[(2) within an delay period granted by the Department.]

[(e) Each deficiency constitutes a separate violation.]

(d) [(f)] The building owner or their representative must report all accidents involving [an elevator, escalator or related] equipment to the Department, using a Department approved form, [by the fastest means available, followed by a written report] within 48 [72] hours of the accident.

[(1) If the accident caused serious bodily injury, the report must include the type of injuries, the type of equipment involved, the name of the building owner, and any other information pertaining to the event leading up to the accident, including the current status of the equipment involved.]

[(2) If the accident caused property damage, the report must include the type of equipment involved, the name of the building owner, and any other information pertaining to the event leading up to the accident, including the current status of the equipment involved.]

(e) [(g)] The building owner shall ensure that all of the tests required by ASME A17.1 -1994, Part X, are made by a person qualified to perform such services. Such tests must be performed in the presence of the inspector [a QEI registered with the Department]. The person performing the test must be familiar with the operation of the equipment and available to accompany and assist during an inspection.

(f) [(h)] If any equipment is determined to be unsafe, by inspection or other means, the[The] building owner shall notify the Department in writing within 48 hours, and shall [immediately] place the

unsafe [any unsafe elevator, escalator, or related] equipment out of operation [service] until repairs to correct the unsafe condition(s) [condition] are completed. After repairs have been completed, the building owner shall submit written verification to the Department that the unsafe condition has been corrected.

(g) [(i)] New [elevator, escalator or related] equipment installations must be inspected and tested to determine their safety and [in] compliance with the requirements of ASME A17.1-1994, before being placed in service [A17.1 Code in effect at date of installation].

(h) [(j)] Altered [elevators, escalators or related] equipment must be inspected and tested to determine its safety and [in] compliance with the requirements of ASME A17.1-1994, [A17.1, Part XII,] and ASME A17.3-1994 before being placed back in service [A17.3 (1994)] .

(i) Existing equipment must be inspected and tested annually to determine its safety and compliance with the requirements of ASME A17.3-1994.

(j) The owner of the building in which equipment is located must obtain a yearly certificate of compliance from the Department evidencing that all equipment in the building is in compliance with the Act and all applicable rules and standards. The owner of the building must have a current Certificate of Compliance in order to operate equipment located in the building.

§74.75. Responsibilities of the Inspector.

(a) Inspection procedures.

(1) The inspector must inspect all [elevators, escalators, and related] equipment for compliance with the applicable [installation] standards as adopted in §74.100 (relating to Technical Requirements) [of ASME A17.1, "Safety Code for Elevators and Escalators" in effect the date of installation, and 1994 ASME A17.3, "Safety Code for Existing Elevators and Escalators", regardless of the installation date].

(2) Inspectors must use the [current edition of all] ASME A17.2-1994, "Inspectors' [A17.2 "Inspector] Manuals" to conduct inspections and witness tests for compliance with the standards adopted by the Department.

(3) The inspector [QEI] shall report to the building owner or agent [representative] before beginning any inspections.

(4) The qualified person performing the safety tests and the inspector [QEI] must sign and date the inspection report [Inspector's Report].

(5) The inspector [QEI shall only witness the inspections and safety tests per ASME A17.1 Section 1000 and] shall not perform any of the safety tests. [Two persons are required to complete an inspection.]

(6) On new or altered equipment [elevator or escalator] installations, the inspector [QEI] may perform an inspection prior to the installation being completed. However, on these installations the Department will only accept inspection reports for final inspections performed by the inspector after the installation is completed.

(b) Department [Inspector's] forms

(1) The inspector must use current Department approved forms for reporting inspections. [These forms may be copied, but must not be altered.]

(2) The Department forms [Inspector's Summary Report] shall be filled out completely , and shall be used to report the all inspections of existing equipment and final inspections of new or altered equipment.

(3) The inspector must list all ASME Code violations by code rule number for each unit inspected, and include a written description of the violation on the Department Form [that unit's Inspection Report]. If the ASME Code refers to another code, the inspector must list both code rule numbers and include a written description of the violation.

(c) Inspector's Equipment

(1) Test Tags

(A) The inspector must purchase test tags from the Department and shall be the person who attaches these tags to the inspected equipment.

[(B) The Department shall purchase unused test tags from inspectors when requested to do so in writing.

(C) After issued by the Department, test tags cannot be transferred.]

(B) [(D)] The inspector shall inscribe all required information on each test tag [including the inspection date and signature].

(C) [(E)] Upon completion of the initial Acceptance tests [a test], Department test tags shall be attached to the equipment with wire rope and lead seal [purchased from the Department].

(D) [(F)] The lead seal shall be crimped onto the wire rope using a crimping tool [purchased from the Department] bearing the Department's seal and the crimping tool number assigned to the inspector. [Neither crimping tools nor the assigned inspector's number may be transferred to another person.]

(E) Inspector's equipment may be purchased from the Department for:

(i) $100 per 100 test tag (sold in multiples of 100);

(ii) $10 per 100 wire ropes and lead seals (sold in multiples of 100); and,

(iii) $90 for seal crimping tool.

(F) [(G)] Test tags shall be attached to equipment in accordance with the following schedule:

(i) Electric Elevators , Acceptance and Five Year Tests - to the overspeed governor(s), safety releasing carrier, and each buffer or set of buffers. Tags shall not be removed and replaced until after all date and signature spaces on the tag are filled.

[(I) Acceptance/Five Year Test - to the overspeed governor(s), safety releasing carrier, and each buffer or set of buffers, and shall remain until the next five year test.]

[(II) Yearly Test - to the overspeed governor(s) - (in addition to the Five Year Tag), and shall remain until the next yearly test.]

(ii) Hydraulic Elevators , Acceptance Tests - to the relief valve. Tags shall not be removed and replaced until after all date and signature spaces on the tag are filled.

[(I) Acceptance Test - to the relief valve, and shall not be removed.]

[(II) Yearly Test - to the relief valve and shall remain until the next yearly test.]

(iii) Escalators , Acceptance Tests - to the overspeed governor and/or emergency brake. Tags shall not be removed and replaced until after all date and signature spaces on the tag are filled.

[(I) Acceptance Test - to the overspeed governor and/or emergency brake, and shall not be removed.]

[(II) Yearly Test - to the main line disconnect and shall remain until the next yearly test.]

(2) Decals

(A) Each piece of equipment shall be identified [The inspector shall permanently identify each elevator, escalator, and related equipment] with a unique identification number [numbered] decal issued by the Department, which the inspector must affix to [stay on] the upper right hand corner of the control panel . The decal shall remain on the control panel for the life of the equipment.

[(B) The Department decal shall be affixed to the upper right hand corner of the control panel.]

(B) [(C)]An additional [A] Department decal shall not [only] be affixed to equipment that has a current [does not currently have a] Department decal displayed.

(C) [(D)] All correspondence and inspection reports [inspector's reports] shall reference the decal number and Department building ID number, as reflected on the Certificate of Compliance.

(D) If an inspector places a new decal on a piece of equipment to replace a lost or destroyed decal, the inspector must report the equipment's location and new decal number to the Department within ten days.

[(E) Changes of decal numbers must be reported to the Department to include the previous decal number.]

[(F) After issued by the Department, decals may not be transferred.]

§74.80. Fees.

(a) Inspector registration fees:

(1) original - $15; [and]

(2) renewal - $15 ; and [-]

(3) Revised/Duplicate registration card - $15.

(b) Certificate of Compliance filing fees:

(1) within 60 days of completion of all inspections within a building - $20 per building; plus

(2) $5 [$5.00] per piece of [elevator, escalator or related] equipment; [and]

(3) $100 late filing fee if the inspection report and filing fees are filed after the 60th day from the completion of all inspections within a building, and [-]

(4) $25 per Revised/Duplicate Certificate.

[(c) Inspector's equipment:]

[(1) $200 for a kit of 100 each, test tags, wire rope and lead seals; and]

[(2) $90 for seal crimping tool.]

(c) [(d)] Waiver/delay application fee: $50 for each ASME Code [waiver or delay, per] violation , per piece of equipment, requested to be waived or delayed.

(d) [(e)] [A fee may not be charged or collected by the Department for a Certificate of Compliance for an institution of higher education as defined in the Education Code, §61.003.] Fees shall be charged and collected by the Department for a waiver or delay application for an institution of higher education. [The fees charged by the QEI-1 or inspection agency for performing the inspection shall be paid by the institution of higher education.]

§74.90. Sanctions.

If a person violates Texas Health and Safety Code Annotated, Chapter 754 [(Vernon 1997)], or a rule, or order of the Executive Director or Commission relating to the Act [this Code and Chapter], proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Act [this Code] or [the Texas Department of Licensing and Regulation,] Texas Occupations Code, Chapter 51 [(Vernon 1999)], and 16 Texas Administrative Code, Chapter 60 [(1998)] of this title (relating to the Texas Department of Licensing and Regulation).

§74.100. Technical Requirements.

(a) The Department adopts ASME A17.1-1994 and ASME A17.3-1994 for new equipment installed on or after September 1, 1995 [A17.1 in effect on the date of installation and 1994 ASME A17.3, Safety Code for Elevators and Escalators].

(b) The Department adopts ASME A17.1-1994 and ASME A17.3-1994 for altered equipment regardless of the installation date.

[(b) All inspections must be performed utilizing the latest edition of the ASME Inspector's Manuals A17.2.1, A17.2.2, and A17.3.2.]

(c) The Department adopts ASME 17.3-1994, for existing equipment installed before September 1, 1995.

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 November 13, 2002.

TRD-200207410
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-7348

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CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §80.25

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at Title 16 Texas Administrative Code §80.25 regarding the Licensed Court Interpreter program. The new rule provides procedures for license renewals in the Licensed Court Interpreter program.

This rule is necessary to establish procedural requirements for license renewals under the licensed court interpreter program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or 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 an increase in the availability of qualified court interpreters. There will be no new economic cost to those required to comply

with the proposal because the proposed rule simply establishes a procedure for license renewal.

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*.

New §80.25 is proposed under Texas Government Code, Chapter 57, §57.022 which authorizes the Texas Commission of Licensing and Regulation to provide by rule procedures for certificate renewal 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 Government Code, Chapter 57 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§80.25. Licensing Requirements - Renewal.

(a) A complete application for license renewal and all required fees must be filed by the expiration date, or the application will be considered late and the license will expire.

(b) Non-receipt of a license renewal notice from the Department does not exempt a person from any requirements of this chapter.

(c) A person shall not perform work requiring a license under Chapter 57 of the Texas Government Code with an expired license.

(d) A license that has expired for a period of less than one year may be reissued upon meeting the conditions of a license renewal, as outlined in this section, and payment of required fees, including the renewal fee and the late renewal fee.

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 November 13, 2002.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

19 TAC §101.3001, §101.3003

The Texas Education Agency (TEA) proposes new §101.3001 and §101.3003, concerning assessment. The new sections are proposed to implement certain requirements for the new testing program, called the Texas Assessment of Knowledge and Skills (TAKS), as specified by Acts of the 76th Texas Legislature, 1999, Chapter 397, Section 9, and to clarify transitional issues related to this new testing program.

Senate Bill (SB) 103, 76th Texas Legislature, 1999, mandated a new testing program of increased rigor, size, and scope that must be implemented no later than the 2002-2003 school year. Planning for this new program, the TAKS, began in the fall of 1999 and full implementation is on schedule for the 2002-2003 school year. A series of rule actions have occurred to implement the new testing program since its enactment by the Texas Legislature in 1999.

At its November 2000 meeting, the State Board of Education (SBOE) adopted the review of the assessment rules that had been in effect since January 1996 and directed agency staff to develop proposed amendments. The repeal of and new 19 TAC Chapter 101, Assessment, were subsequently adopted by the SBOE at its September 2001 meeting, with an effective date of November 15, 2001. These current rules were developed to achieve the following objectives: (1) to comply with new requirements in statute (e.g., the reading proficiency tests in English (RPTE), with baseline administration in spring 2000; the state-developed alternative assessment (SDAA), with baseline administration in spring 2001; and the TAKS, with first administration in spring 2003); (2) to clarify the policy and standards, roles and responsibilities, and requirements of the statewide assessment program through reorganization of the rules; (3) to improve their clarity and readability for all stakeholders in public education so that the rules may more effectively promote public understanding of the assessment program and full compliance with program requirements; and (4) to continue to uphold the testing standards as affirmed in the federal court ruling in January 2000 by United States District Court Judge Edward Prado of San Antonio. This ruling in support of standardized, statewide testing in Texas public schools set forth the constitutional and legal standards that states must meet in developing and implementing high-stakes tests that are valid and reliable and educational policies that are fair and reasonable.

The new SBOE assessment rules include provisions relating to eligibility to receive a high school diploma. Beginning with the 2003-2004 school year, students who were enrolled in Grade 8 or a lower grade on January 1, 2001, must fulfill testing requirements for graduation with the Grade 11 exit level TAKS test.

Following this major rewriting of the SBOE assessment rules, an Attorney General's opinion was requested to clarify the respective roles and responsibilities of the SBOE and the agency as related to the statewide assessment program, authorized by the Texas Education Code (TEC), Chapter 39, Subchapter B. In its March 12, 2002, letter in response to this request, the Attorney General also confirmed certain rulemaking authority of the commissioner of education for implementing the new testing program, as set forth in Section 9 of SB 103, 76th Texas Legislature, 1999.

As part of the new testing program, new 19 TAC Chapter 101, Assessment, Subchapter BB, Commissioner's Rules Concerning the Student Success Initiative, was adopted and became effective May 26, 2002. The purpose of these rules is to implement new grade advancement testing requirements, enacted by the 76th Texas Legislature as the Student Success Initiative. This initiative mandates new passing requirements to be phased in as follows: beginning in school year 2002-2003 for the reading

test at Grade 3, beginning in school year 2004-2005 for the reading and mathematics tests at Grade 5, and beginning in school year 2007-2008 for the reading and mathematics tests at Grade 8. As specified by these requirements, a student may advance to the next grade level only by passing these tests or by unanimous decision of his or her grade placement committee as likely to perform at grade level after accelerated instruction.

The proposed new 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of Testing Program, has been developed in response to statute. TEC, §39.023, requires the commissioner to adopt rules for implementing the new testing program set forth in 19 TAC Chapter 101, Subchapters A-E. In addition, 19 TAC Chapter 101, Subchapter CC, addresses a transitional issue regarding the first cohort required to meet the TAKS Grade 11 exit level testing requirements. The following is a summary of the provisions addressed in proposed new 19 TAC Chapter 101, Subchapter CC.

Proposed new 19 TAC §101.3001 sets forth the specific implementation activities required in Section 9 of SB 103. These requirements include provisions related to: (1) SBOE administration of the new TAKS assessment instruments; (2) agency inclusion of test results on each TAKS assessment instrument in evaluating school performance; (3) SBOE administration of assessment instruments in mathematics tests for Grades 9 and 10, reading tests for Grade 9, and English language arts tests for Grade 10; (4) agency inclusion of student performance on tests in school evaluations; (5) SBOE administration of each appropriate assessment as the statute existed before amendment by SB 103; and (6) student entitlement, in certain instances, to receive a high school diploma if the student performed satisfactorily on the end-of- course assessments and completes all other requirements for high school graduation.

Proposed new 19 TAC §101.3003 addresses a transitional issue regarding the first cohort that must meet exit level testing requirements with the TAKS. This section clarifies that students who are on an accelerated track and who fulfill all graduation requirements other than passage of an exit level test before September 1, 2004, may fulfill their testing requirements for graduation with the test that was in effect when he or she was first eligible to take the test, the Grade 10 exit level Texas Assessment of Academic Skills (TAAS) test. This applies to students regardless of whether they were enrolled in Grade 8 or a lower grade on January 1, 2001.

Ann Smisko, associate commissioner for curriculum, assessment, and technology, 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 new sections.

Dr. Smisko 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 new sections will be that the Texas student assessment program provides Texas students, schools, and the public with an accurate gauge of students' academic progress in learning the key components of the Texas Essential Knowledge and Skills. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new sections are proposed under Senate Bill 103, Section 9, 76th Texas Legislature, 1999 (Acts of the 76th Texas Legislature, 1999, Chapter 397), which authorizes the commissioner of education to adopt rules for the implementation of the Texas Education Code, §39.023.

The new sections implement the TEC, §39.023.

§101.3001. Implementation of New Assessment Instruments.

(a) In this section, the Act means Acts of the 76th Texas Legislature, 1999, Chapter 397.

(b) In accordance with Senate Bill 103, Section 9, 76th Texas Legislature, 1999, this section is adopted by the commissioner of education for the implementation of the Texas Education Code (TEC), §39.023.

(1) The State Board of Education (SBOE) shall administer each assessment instrument added by the Act not later than the 2002-2003 school year, in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

(2) The Texas Education Agency (TEA), not later than the 2004-2005 school year, shall include the results of student performance on each assessment instrument added by the Act in evaluating the performance of school districts, campuses, and open enrollment charter schools under the TEC, Chapter 39, Subchapter D.

(3) The SBOE, not later than the 2004-2005 school year, shall administer assessment instruments under the TEC, §39.023(b), that correspond to the following assessment instruments required under the TEC, §39.023(a), as amended by the Act:

(A) the mathematics assessment instrument administered in Grades 9 and 10;

(B) the reading assessment instrument administered in Grade 9; and

(C) the English language arts assessment instrument administered in Grade 10.

(4) The TEA, not later than the 2006-2007 school year, shall include the results of student performance on each assessment instrument described by paragraph (3) of this subsection in evaluating the performance of school districts, campuses, and open-enrollment charter schools under the TEC, Chapter 39, Subchapter D.

(5) Pending the introduction of any assessment instrument added by the Act:

(A) the SBOE shall administer each appropriate assessment under the TEC, §39.023, as that section existed before amendment by the Act;

(B) a student who performed satisfactorily on the end-of-course assessment instruments specified by the TEC, §39.025, as that section existed before amendment by the Act, is entitled to receive a high school diploma if the student completes all other requirements for high school graduation; and

(C) the former law as specified in the TEC, Chapter 39, Subchapter B, is continued in effect for the purposes provided by this paragraph.

§101.3003. Transitional Issues Related to New Assessment Program.

Section 101.7(b) of this title (relating to Testing Requirements for Graduation) specifies the first class that must fulfill testing requirements for graduation with the Grade 11 exit level Texas Assessment of Knowledge and Skills (TAKS) tests as students who were enrolled in Grade 8 or a lower grade on January 1, 2001, for students on a regular track toward graduation. This section applies to students who are on an accelerated track to graduate prior to the 2004-2005 school year. Regardless of whether they were enrolled in Grade 8 or a lower grade on January 1, 2001, students who fulfill all graduation requirements other than passage of an exit level test before September 1, 2004, may fulfill their testing requirements for graduation with the Grade 10 exit level Texas Assessment of Academic Skills (TAAS) test.

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 November 18, 2002.

TRD-200207512
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-9701

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER U. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §230.601

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §230.601, relating to assignment of public school personnel certified by SBEC. The proposed amendments would ensure continued alignment of assignment rules with the state public school curriculum, the Texas Essential Knowledge and Skills (TEKS), adopted by the State Board of Education (SBOE) or, in the case of special education assignments, alignment with state and federal requirements. If adopted, the amendments would streamline current assignment rules by removing specifically required educator preparation courses, where appropriate, that are listed under certain broad curriculum areas. The proposed amendments would also remove from the current assignment rules all credentials issued by other state and national licensing agencies.

The proposed amendments, however, would retain in rule the current criteria for assignment of personnel for persons who are issued certificates based on standards existing prior to the implementation of new certificates and related certification exams aligned with the TEKS.

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

Dan Junell, General Counsel, State Board for Educator Certification, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be efficient and updated rules governing the assignment of public school educators. The purpose of the rule is to clarify the requirements for educator assignments and to align new certificates with the state-mandated public school curriculum. There will be no affect to small or micro businesses.

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

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

Comments regarding the proposed amendments may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 4616 West Howard Lane, Suite 120, Austin, Texas 78728, or by e-mail at "djunell@sbec.state.tx.us."

The amendment is proposed under the statutory authority of §21.031(a), Education Code, which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter.

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

§230.601. Assignment of Public School Personnel.

(a) The assignment requirements in this subchapter apply to the holders of certificates issued on the basis of 1955, 1972, 1984, and 1987 Standards for Teacher Education. [~~An individual who holds a valid certificate based on successful completion of the appropriate examination requirements specified in this Chapter, met the assignment requirements in effect for a subject, and was assigned to teach that subject before September 1, 1989, shall remain eligible to teach the subject. An individual who met the assignment requirements and was assigned to teach reading improvement, reading, or advanced reading before September 1, 1990, shall remain eligible to teach that subject.~~]

(b) The assignment requirements for classroom certificates early childhood-grade 4, grades 4-8 and grades 8-12 issued on the basis of standards that are aligned with the Texas Essential Knowledge and Skills (TEKS) curriculum adopted by the State Board of Education under this title are specified in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates). [~~The preparation of teachers assigned to Grades 6-8, which are organized on a self-contained basis, shall comply with the standards for elementary teachers. A self-contained class shall be defined as a class that is taught by one teacher for at least 50% of the school day.~~]

(c) An elementary certificate may be appropriate for teaching high school students if the level of instruction is comparable to that in elementary grades. When such an assignment is made, course outlines must be maintained in the school district files.

(d) All professional personnel employed in federally funded programs and innovative programs must have the qualifications and meet the assignment requirements specified in subsection (f) of this section or elsewhere in this title.

(e) The assignment requirements in this subchapter apply to substitute teachers. If a school district must employ substitute teachers who are not certified, a list of the substitute teachers shall be retained in the school district files.

(f) A public school employee must have the appropriate credentials for his or her current assignment specified in the charts in this section or elsewhere in this title, unless the appropriate permit has been issued under Subchapter Q of this chapter (relating to Permits).
Figure: 19 TAC §230.601(f)

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 November 13, 2002.

TRD-200207405
William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 469-3011

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.2 - 233.8

The State Board for Educator Certification proposes amendments to the following sections of 19 TAC Chapter 233: §233.2, relating to the generalist certificates for teaching in early childhood programs through grade 4 or in grades 4-8; §233.3, relating to the certificates for teaching English language arts and reading, social studies, or history in grades 4-8 or 8-12; §233.4, relating to the certificates for teaching mathematics or science in grades 4-8 or 8-12; §233.5, relating to certificates for teaching technology applications in grades; §233.6, relating to certificates for teaching in bilingual education programs; new §233.7, relating to certificates for teaching English as a second language; and new §233.8, relating to certificates for teaching in special education.

The proposed amendments to §233.2 would provide school districts flexibility in the assignment of educators holding the Standard EC-4 Generalist, EC-4 Bilingual Education Generalist, or the EC-4 English as a Second Language Generalist Certificate to be assigned in self-contained 5th and 6th grade classrooms during the 2003-2004, 2004-2005, and 2005-2006 school years only under certain conditions.

The proposed amendments to §§233.3-233.6 would clarify the curriculum areas linked to the Texas Essential Knowledge and Skills (TEKS) that holders of certificates for levels EC-4, 4-8, and 8-12 may teach.

Proposed New §233.7 and §233.8 add to existing rules the new categories of classroom certificates that are scheduled for implementation in fall 2003, including Special Education: Early Childhood - Grade 12, Special Education Supplemental, English as a Second Language Generalist: Early Childhood - Grade 4 and Grade 4-8, and English as a Second Language Supplemental certificates. As proposed, amended §233.7 and §233.8 would also clarify the broad curriculum areas or courses identified in the TEKS that the holder of each new Special Education and English as a Second Language certificate would be prepared to teach.

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

Dan Junell, General Counsel, State Board for Educator Certification, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be efficient and updated rules governing the assignment of public school educators. The purpose of the rule is to clarify the requirements for educator assignments and to align new certificates with the state-mandated public school curriculum. There will be no affect to small or micro businesses.

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

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

Comments regarding the proposal may be submitted to Dan Junell, General Counsel, State Board for Educator Certification, 4616 West Howard Lane, Suite 120, Austin, Texas 78728, or by e-mail at "djunell@sbec.state.tx.us."

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

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

§233.2. Generalist.

(a) Generalist: Early Childhood-Grade 4. The Generalist: EC-4 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: EC-4 certificate may teach the following content areas in a pre-kindergarten program, in kindergarten, and in Grades 1 through 4:

(1) Art;

(2) Health;

(3) Music;

(4) Physical Education;

(5) English Language Arts and Reading;

(6) Mathematics;

(7) Science;

(8) Social Studies.

(b) Generalist: Grades 4-8. The Generalist: 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: 4-8 certificate may teach the following content areas in Grades 4 through 8:

(1) English Language Arts and Reading;

(2) Mathematics;

(3) Science;

(4) Social Studies.

(c) The holder of the *Generalist: Early Childhood-Grade 4, Bilingual Generalist: EC-4,* and *English as a Second Language Generalist: EC-4* certificates may be assigned to teach the content areas specified in §233.2(a) of this chapter in a self-contained classroom in grades five and six during the school years 2003-2004, 2004-2005, and 2005-2006.

(1) The superintendent or designee must report the assignment to the State Board for Educator Certification in a manner approved by the executive director.

(2) The superintendent or designee must affirm:

(A) the district's efforts to recruit and employ a fully certified and qualified teacher for the assignment, including the reason for determining as unqualified each appropriately certified applicant. The district must maintain documentation of its recruiting efforts for a period of two years from the date of the making of the record:

(B) that the holder of one of the certificates specified in this subsection will be provided with a trained mentor for the entire period of the assignment to help the person perform effectively in the assignment; and

(C) that written consent has been obtained from the holder of one of the certificates specified in this subsection prior to assignment to self-contained classes in grades five or six.

(i) A teacher who refuses to consent to assignment under the provisions of this subsection may not be terminated. nonrenewed, or otherwise retaliated against because of the teacher's refusal to consent to the assignment.

(ii) A teacher's refusal to consent to the assignment under the provisions of this subsection shall not impair a school district's right to implement a necessary reduction in force or other personnel action in accordance with school district policy.

(3) Individuals assigned to self-contained classrooms in grades five and six under the provisions of this subsection are subject to the provisions of Texas Education Code (TEC) §21.057, Parental Notification.

(4) The provisions of the subsection shall expire on June 30, 2006.

§233.3. English Language Arts and Reading; Social Studies.

(a) English Language Arts and Reading: Grades 4-8. The *English Language Arts and Reading: 4-8* certificate may be issued no earlier than September 1, 2002. The holder of the *English Language Arts and Reading: 4-8* certificate may teach English language arts[~~, including speech,~~] and reading in Grades 4 through 8.

(b) Social Studies: Grades 4-8. The Social Studies: 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: 4-8 certificate may teach social studies in Grades 4 through 8.

(c) English Language Arts and Reading/ Social Studies: Grades 4-8. The *English Language Arts and Reading/ Social Studies: 4-8* certificate may be issued no earlier than September 1, 2002. The holder of the *English Language Arts and Reading/ Social Studies: 4-8* certificate may teach English language arts and[~~, including speech,~~] reading, and social studies in Grades 4 through 8.

(d) English Language Arts and Reading: Grades 8-12. The *English Language Arts and Reading: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *English Language Arts and Reading: 8-12* certificate may teach English language arts and reading in Grade 8 and all English language arts and reading courses in Grades 9 through 12[~~, including speech and journalism, and reading in Grades 8 through 12~~].

(e) Social Studies: Grades 8-12. The *Social Studies: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *Social Studies: 8-12* certificate may teach social studies in Grade 8 and all social studies[~~, including history~~] and economics courses in Grades 9 [~~8~~] through 12.

(f) History: Grades 8-12. The *History: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *History: 8-12* certificate may teach social studies in Grade 8 and all history courses in Grades 9 through 12.

§233.4. Mathematics; Science.

(a) Mathematics: Grades 4-8. The Mathematics: 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: 4-8 certificate may teach mathematics in Grades 4 through 8.

(b) Science: Grades 4-8. The Science: 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Science: 4-8 certificate may teach science in Grades 4 through 8.

(c) Mathematics/Science: Grades 4-8. The Mathematics/Science: 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics/Science: 4-8 certificate may teach mathematics and science in Grades 4 through 8.

(d) Mathematics: Grades 8-12. The *Mathematics: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *Mathematics: 8-12* certificate may teach mathematics in Grade 8 and all mathematics courses in Grades 9 [~~8~~] through 12.

(e) Science: Grades 8-12. The *Science: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *Science: 8-12* certificate may teach science in Grade 8 and all science courses[~~, including life and physical science,~~] in Grades 9 [~~8~~] through 12.

(f) Life Science: Grades 8-12. The *Life Science: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *Life Science: 8-12* certificate may teach science in Grade 8 and [~~life science, including~~] all biology courses, environmental and aquatic sciences, and all Health Science Technology courses for which science credit is given in Grades 9 [~~8~~] through 12.

(g) Physical Science: Grades 8-12. The *Physical Science: 8-12* certificate may be issued no earlier than September 1, 2002. The holder of the *Physical Science: 8-12* certificate may teach science in Grade 8 and [~~physical science, including~~] all physics and chemistry courses, including Integrated Physics and Chemistry, Principles of Technology I and II, and Scientific Research and Design in Grades 9 [~~8~~] through 12.

§233.5. Technology Applications.

(a) Technology Applications: Grades 8-12. The *Technology Applications: 8-12* certificate may be issued no earlier than June 1, 2001. The holder of the *Technology Applications: 8-12* certificate may teach Technology Applications in Grade 8 and the following technology applications courses in Grades 9 through 12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications[~~, in Grades 8 through 12~~].

(b) Technology Applications: Early Childhood-Grade 12. The Technology Applications: EC-12 certificate may be issued no earlier than September 1, 2002. The holder of the Technology Applications: Early Childhood-Grade 12 certificate may teach the technology applications curriculum in pre-kindergarten, kindergarten, and grades 1-12, with the exception of computer science I and II.

(c) Computer Science: Grades 8-12. *The Computer Science:8-12* certificate may be issued no earlier than June 1, 2001. The holder of the *Computer Science: 8-12* certificate may [~~teach the following technology applications courses:~~] computer science I and II in Grades 8 through 12.

§233.6. Bilingual Education.

(a) Bilingual Generalist: Early Childhood-Grade 4. The *Bilingual Generalist: EC-4* certificate may be issued no earlier than September 1, 2002. The holder of the *Bilingual Generalist: EC-4* certificate may teach in a bilingual pre-kindergarten program, a bilingual kindergarten program, and a bilingual program in Grades 1 through 4. The holder of the *Bilingual Generalist: EC-4* may teach the same content areas, in either a bilingual or general education program, as the holder of the *Generalist: EC-4* certificate may teach under §233.2(a) of this title (relating to Generalist). The holder of the *Bilingual Generalist: EC-4* certificate may also teach in an English as a second language program in EC-Grade 4.

(b) Bilingual Generalist: Grades 4-8. The *Bilingual Generalist: 4-8* certificate may be issued no earlier than September 1, 2002. The holder of the *Bilingual Generalist: 4-8* certificate may teach in a bilingual program in Grades 4 through 8. The holder of the *Bilingual Generalist: 4-8* may teach the same content areas, in either a bilingual or a general education program, as the holder of the *Generalist: 4-8* certificate may teach under §233.2(b) of this title. The holder of the *Bilingual Generalist: Grades 4-8* certificate may also teach in an English as a second language program in Grades 4-8.

(c) Bilingual Education Supplemental: Early Childhood-Grade 4. The *Bilingual Education Supplemental: EC-4* certificate may be issued no earlier than September 1, 2002. The holder of the *Bilingual Education Supplemental: EC-4* certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the *Bilingual Education Supplemental: Grades EC-4* certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

(d) Bilingual Education Supplemental: Grades 4-8. The *Bilingual Education Supplemental: 4-8* certificate may be issued no earlier than September 1, 2002. The holder of the *Bilingual Education Supplemental: 4-8* certificate may teach in a bilingual program at the same grade levels and in the content area(s) of the holder's base certificate. The holder of the *Bilingual Education Supplemental: Grades 4-8* certificate may also teach in an English as a second language program at the same grade levels and in the content area(s) of the holder's base certificate.

§233.7. English as a Second Language.

(a) English as a Second Language Generalist: Early Childhood-Grade 4. The *English as a Second Language Generalist: EC-4* certificate may be issued no earlier than September 1, 2003. The holder of the *English as a Second Language Generalist: EC-4* certificate may teach in an English as a second language program in pre-kindergarten through Grade 4. The holder of the *English as a Second Language Generalist: EC-4* may teach the same content areas, in either an English as a second language or a general education program, as the holder of the *Generalist: EC-4* certificate may teach under §233.2(a) of this title.

(b) English as a Second Language Generalist: Grade 4-8. The *English as a Second Language Generalist: Grades 4-8* certificate may be issued no earlier than September 1, 2003. The holder of the *English as a Second Language Generalist: Grades 4-8* certificate may teach in an English as a second language program in Grades 4-8. The holder of the *English as a Second Language Generalist: Grades 4-8* may teach the same content areas, in either an English as a second language or a general education program, as the holder of the *Generalist: Grades 4-8* certificate may teach under §233.2(b) of this title.

(c) English as a Second Language Supplemental. The *English as a Second Language Supplemental* certificate may be issued no earlier than September 1, 2003. The holder of the *English as a Second Language Supplemental* certificate may teach in an English as a Second Language program at the same grade levels and in the same content area(s) of the holder's base certificate.

§233.8. Special Education.

(a) Special Education: Early Childhood-Grade 12. The *Special Education: Early Childhood-Grade 12* certificate may be issued no earlier than September 1. 2003. The holder of the *Special Education: Early Childhood-Grade 12* certificate may teach at any level of a basic special education instructional program serving eligible students 3-21 years of age, unless otherwise specified in Chapter 89, Subchapter AA, §89.1131 of this title, (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

(b) Special Education Supplemental. The *Special Education Supplemental* certificate may be issued no earlier than September 1, 2003. The holder of the *Special Education Supplemental* certificate may teach in a special education instructional program serving eligible students at the same grade levels and in the content area(s) of the holder's base certificate, unless otherwise specified in Chapter 89, Subchapter AA, §89.1131 of this title, relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

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 November 13, 2002.

TRD-200207406
William Franz
Executive Director
State Board for Educator Certification
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE
SUBCHAPTER D. BARBER SHOPS

22 TAC §51.93

The Texas State Board of Barber Examiners proposes amendments to §51.93. Sanitation Rules for Barber Shops, Schools and Colleges. The amendments clarify that barber shops shall have not less than one sink per three (rather than two) chairs whereas barber schools/colleges shall have not less than one sink per two chairs.

Douglas A. Beran, Ph.D., Executive Director, has determined that, for the first five-year period the rule is in effect, enforcing or administering the rule has no foreseeable economic implications relating to costs or revenues of the state or local government.

Dr. Beran also has determined that, for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that barber shops, barber schools and colleges are operated and maintained with sanitary conditions. The anticipated economic costs to the persons who are required to comply with the rule as adopted are negligible.

Comments on the proposed amendments may be submitted to Mary Feys, State Board of Barber Examiners, 5717 Balcones Dr., Suite 217, Austin, Texas 78731 (1-888-870-8755; Fax 512-458-4901; e-mail mary.feys@tsbbe.state.tx.us) no later than 30 days from the date the proposed action is published in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code Chapter 1601.152, which directs the board to adopt reasonable rules on sanitation for the operation of barber shops, specialty shops, and barber schools, and Chapter 1601.151, which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

§51.93. Sanitation Rules for Barber Shops and Barber Schools and Colleges.

(a) Shop Conditions

(1) Establishments to be lighted and ventilated. Every public barber shop and barber school and college as defined in Texas Occupations Code Chapter 1601 shall be properly and adequately lighted and ventilated. An adequate volume of air must be exhausted to remove contaminants from aerosol products. Fresh air must be provided to replace air exhausted.

(2) Walls, ceilings, et cetera, to be kept clean. The walls, ceilings, furniture and other fixtures, and all other exposed surfaces in every such establishment shall be kept clean, free from dust, and maintained in a state of good repair.

(3) Floors to be kept clean. Floors of every such establishment shall be thoroughly cleaned each day. All hair dropping upon the floor shall be removed there from as soon as practicable and in such a manner as not to cause a nuisance. Floors shall be maintained in a state of good repair.

(4) Suitable equipment. Establishments shall be suitably equipped to give adequate service to patrons and shall never be used as a living, dining, or sleeping apartment.

(5) A barber shop or barber school or college must be in a separate room from sleeping quarters and the owner or operator shall permit no person to sleep in any room used wholly or in part as such facility. There shall be no entrances from the facility opening directly into sleeping quarters.

(6) A barber shop or barber school or college must be separated from a place where food is prepared or served by a solid wall from floor to ceiling of lath or plaster or glass or other solid material.

(b) Water Supply, Sewerage, and Toilet Facilities

(1) All barber shops, barber schools, or colleges shall be supplied with an adequate supply of hot and cold water under pressure. When water is not obtained from an acceptable public supply, water must meet the bacteriological, chemical, and physical requirements for drinking water systems of the Texas Department of Health. Whenever possible, the source of water supply shall be from an existing public drinking water system. Cross connections between potable water systems and other systems or equipment containing water or other substances of unknown or questionable safety are prohibited. Protection against backflow and back siphonage shall be provided by proper air-gaps or approved backflow preventers where necessary.

(2) Adequate and safe sewage facilities shall be provided. Whenever possible, the facility shall be connected to a public sewerage facility. Where public sewerage is not available, adequate treatment facilities meeting the standards of the Texas Department of Health and approved by the local health authority shall be installed to dispose of sewage.

(3) Toilet facilities with flush toilets shall be suitably located in adequately and properly ventilated compartments with closing doors that lock from the inside. Toilet facilities in toilet rooms, separate for each sex, shall be provided in all places of employment in accordance with the table in this part.

(4) The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where only one toilet room is reasonably available and can be locked from the inside, the rule requiring separate toilet rooms for each sex can be waived. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purposes of the table: Number employees--Number water closets: 1 to 15--1; 16 to 35--2; 36 to 55--3. When persons other than employees are permitted use of toilet facilities on the premise, the number of such facilities shall be appropriately increased in accordance with the table. For each three required toilet facilities, at least one lavatory shall be located either in the toilet room or adjacent thereto. Where only one or two toilet facilities are provided, at least one lavatory so located shall be provided.

(5) Washing facilities to be provided. Every such establishment shall be provided with suitable and adequate washing facilities for barbering services. Sinks or wash basins must be of nonabsorbent material and properly trapped, with not less than one sink per three [~~two~~] chairs for barber shops and one sink per two chairs for barber schools/colleges.

(6) Drinking water facilities. Where fountain facilities designed for drinking from the stream are provided for dispensing drinking water, such facilities shall be equipped with approved type angle jet fountain heads. No common drinking cups are permitted.

(c) Use of Equipment

(1) No barber or other person affected by these rules shall use on any person a comb, hairbrush, hair duster, mug, shaving brush, razor, shears, scissors, clippers, or tweezers or any similar articles that are not thoroughly cleaned and disinfected since last used.

(2) The use of vacuum type devices for removal of loose hair is satisfactory provided that the portion of the device coming in contact with the patron is easily removed and constructed for easy cleaning and disinfection and shall be disinfected prior to use on each patron.

(d) Attendants to Wash Hands. Attendants shall wash their hands thoroughly with soap and hot water before attending any person.

(e) Cleaning and Disinfecting. A disinfectant, germicide, or bactericide used shall be approved by the Environmental Protection Agency and used according to label instructions. When not in use, instruments may be placed in dry disinfectant equipment or under germicidal ultraviolet light. Metallic instruments with a cutting edge may be disinfected after proper washing by wiping carefully with a clean cotton pad saturated with a 70% alcohol solution, or clipper blades may be disinfected with spray-type disinfectants approved by the Environmental Protection Agency.

(f) Towels

(1) Individual towels required. No towels or washcloths shall be used in any such establishment for more than one person without being properly laundered and sanitized by regular commercial laundering or noncommercial laundering process. The process shall include washing with a laundry detergent and rinsing at a minimum temperature of 150 degrees Fahrenheit for not less than 20 minutes. A bleach or sanitizing cycle using a rinse containing 100 ppm of available chlorine for three minutes may be used in addition to the above wash and rinse cycle. A predrying procedure for towels and washcloths will facilitate the removal of hair. Pre or post drying temperatures should not exceed 165 degrees Fahrenheit.

(2) Wet towels and washcloths must be removed from work-stands upon completion of service to each patron.

(3) Individual headrest coverage required. Before any patron attended at any such establishment is permitted to recline in a chair, the headrest of the chair shall be covered with a clean towel or clean sheet or paper not previously used for any other purposes.

(4) Dipping towels, shaving mugs, brushes, et cetera, in water containers is prohibited.

(5) Clean linens, such as face towels, steam towels, and other linens used in any such establishment shall be kept in a closed cabinet at all times.

(6) Single use towels may be used on only one person.

(7) Clean linens, such as face towels, steam towels, and other linens used in any such establishment shall be kept in a closed cabinet at all times.

(8) Single-use towels may be used on only one person.

(g) Use of Stick Astringent Prohibited. No alums or other astringent in stick or lump form shall be used in any such establishment. (Powdered or liquid caustics are suggested.)

(h) Creams, Lotions, and Cosmetics. All creams, lotions, and other cosmetics used for patrons must be kept in clean and closed containers.

(i) Powder Boxes. Open powder boxes must not be used in a reception room and booths for patrons. Powder must be in shakers or similar receptacles.

(j) Sanitary Removal of Creams and Semisolid Substances. Creams and other semisolid substances must be dipped from the container with disinfected articles or spatula; removing such substances with the fingers is prohibited.

(k) Communicable Diseases and Infections

(1) Employees. No person who is knowingly affected with a disease in communicable form shall work or be employed in such establishment as required in Texas Occupations Code Chapter 1601.

(2) Patrons. No person who to his/her own knowledge is affected with a known disease in communicable form shall be attended in any such establishment.

(l) Regulations To Be Posted. Sufficient copies of these regulations shall be kept posted in conspicuous places in every such establishment.

(m) Penalties. Whoever violates any provision of these rules and regulations as provided in the Texas Occupations Code Chapter 1601 or refuses to comply with any provision thereof shall be fined not to exceed $1,000.

(n) Americans with Disabilities Act. To the extent that these rules are in conflict with the Americans with Disabilities Act, the Act supercedes these rules.

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 November 14, 2002.

TRD-200207470
Dr. Douglas A. Beran, PhD
Executive Director
Texas State Board of Barber Examiners
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 458-1091

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PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.7

The Texas Board of Chiropractic Examiners proposes to amend chapter 80, relating to professional conduct. The proposal creates a new §80.7, relating to providing chiropractic services in a location other than the registered facility of the licensee (out-of-facility services). The board recently received an inquiry from a licensee who wishes to provide chiropractic services to employees of certain businesses at their places of work. She wanted to know whether the board had any requirements or restrictions on such practice. At present, the board does not have rules specifically applicable to this type of practice. Recognizing that other licensees may develop their practice in this direction, the board believes that some regulation should be instituted to provide the board with basic information about these services and to ensure that the public is provided with license and consumer information. Accordingly, the board is proposing §80.7 to provide minimal oversight of out-of-facility services. Proposed §80.7 requires such licensees (1) to submit specified information concerning

each location at which they provide chiropractic services, at the first visit and annually thereafter, and, (2) to provide patients with their license numbers and dates of expiration, consumer information, and basic information about their chiropractic facilities. Only licensees who are practicing at a licensed facility may provide out-of-facility services. Proposed §80.7 does not restrict a licensee from treating a patient, in the patient's home, if the patient is physically unable to visit the chiropractor's facility for treatment.

Sandy Grome, Director of Licensure has determined that for the first five-year period the section, as proposed, is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Grome has also determined that for each year of the first five years, the section, as proposed, is in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendment, will be accessibility to chiropractic care for those persons unable to visit a licensed chiropractic facility and assurance that these services are subject to regulatory scrutiny. For the same period, there is no anticipated adverse economic effect on small or micro businesses, or anticipated economic cost to persons who are required to comply with the proposal.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandy Grome, Rules Committee, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, TX 78701.

The new section is proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the new rules:

§80.7 -- Occupations Code, §201.152

§80.7. Out-of-Facility Practice.

(a) A licensed chiropractor who provides chiropractic services in a location other than a licensed chiropractic facility (out-of-facility services) shall provide the board with a list that contains the following information, for each location:

(1) its name;

(2) its address and telephone number;

(3) the name of the owner or manager; and

(4) the planned or actual number of visits per week.

(b) At each location, the licensee must display, in the treating room, proof of licensure, such as a copy of his or her chiropractic license or the board-issued wallet size license, the name, address, and telephone number of the licensee's registered facility, and the consumer information required to be displayed under §75.8 of this title (relating to Public Interest Information). In lieu of displaying such information, the licensee may provide to each patient an information sheet that includes the information required by this subsection.

(c) A licensee must have on file with the board a licensed chiropractic facility in order to provide out-of-facility services.

(d) This section does not apply to a licensee who treats a patient at the patient's home, because the patient is physically unable to travel to the chiropractic facility.

(e) A licensee shall file the list required by subsection (a) of this section, no later than the 10th day after the date that out-of-facility services were first performed, and annually, thereafter, along with the licensee's annual license renewal.

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 November 14, 2002.

TRD-200207450
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 305-6709

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.12

The Texas State Board of Public Accountancy (Board) proposes new rule §505.12 concerning Enforcement Committee Member Recusals.

The new rule §505.12 will reduce to writing the Board's recusal practice of not voting on a matter that was previously considered by a Board member during an enforcement committee meeting.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the amendment only reduces current Board practice to writing.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because the amendment only reduces current Board practice to writing.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero because the amendment only reduces current Board practice to writing.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the Board's recusal practice will be in a rule form.

The probable economic cost to persons required to comply with the new rule will be zero because the amendment only reduces current Board practice to writing.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December

31, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, Section 901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.12. Enforcement Committee Member Recusals.

A member of the board and an enforcement committee shall recuse himself and take no part in the board's vote on the final disposition in any case considered by that enforcement committee.

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

Filed with the Office of the Secretary of State on November 14, 2002.

TRD-200207462
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 305-7848

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CHAPTER 511. CERTIFICATION AS A CPA
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57 concerning Definition of Accounting Courses.

The amendment to §511.57 will allow the Board to accept courses taken in community colleges and Management Information System ("MIS") courses and positions the timing or scheduling of internships in a student's course work.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that students will receive credit for courses completed at Community Colleges, will receive credit for MIS courses, and will have their internships scheduled for a time the Board considers to be most beneficial to the student.

The probable economic cost to persons required to comply with the amendment will be zero because the proposed amendment does not require anyone to do or not do anything additional.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because small businesses are not required to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.254, which authorizes the Board to promulgate rules regarding education requirements.

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

§511.57. Definition of Accounting Courses.

The board will accept not fewer than 30 passing semester hours of upper division accounting courses without repeat from the courses listed below. A recognized educational institution must have accepted the courses[~~them~~] for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of any transcript-issuing institution. An individual who holds a baccalaureate degree from a recognized educational institution may enter into a course of study at an accredited community college, provided that the accounting program offered at the community college was reviewed and accepted by the board. Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system:[~~Not less than 20 semester hours must be in core accounting courses in the following subject areas:~~]

[~~(1) accounting core courses:~~]

(1) [~~(A)~~] intermediate accounting, advanced accounting;

(2) [~~(B)~~] cost accounting;

(3) [~~(C)~~] auditing, internal accounting control and evaluation;

(4) [~~(D)~~] report writing (principally writing financial reports, internal control reports, and management letters);

(5) [~~(E)~~] financial statement analysis;

(6) [~~(F)~~] accounting theory, standards, and analysis;

(7) [~~(G)~~] up to twelve[~~six~~] semester hours of income tax;

(8) [~~(H)~~] accounting for governmental and/or other nonprofit organizations; [~~and~~]

(9) [~~(I)~~] up to twelve[~~six~~] semester hours of accounting systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the college or university accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) fraud examination; and

[~~(2) other accounting courses:~~]

[~~(A) income tax accounting (not to exceed 12 semester hours, including hours in paragraph (1)(G) of this section);~~]

[~~(B) accounting systems, including management information systems (not to exceed 12 semester hours, including hours in paragraph (1)(I) of this section);~~]

[~~(C) accounting consultation;~~]

[~~(D) accounting for specialized businesses or industries (such as fiduciaries, banks, etc.);~~]

(11) [~~(E)~~] an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(A) [~~(i)~~] the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) [~~(ii)~~] the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) [~~(iii)~~] the internship plan is approved in advance by the faculty coordinator[~~advisor~~];

(D) [~~(iv)~~] the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) [~~(v)~~] the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) [~~(vi)~~] the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) [~~(vii)~~] the student writes a paper demonstrating the knowledge gained in the internship; [~~and~~]

(H) [~~(viii)~~] the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester hours of upper division course work has been completed; and

(J) the internship course shall be taken prior to completing the last full semester of course work in order to integrate the knowledge gained during the internship into the curriculum requirements for the degree program.

(12) [~~(F)~~] any other course which is principally accounting or auditing in nature but which may be designated by some other name (and the verification of which is obtained in writing from the particular college or university). After the November 1997 examination, elementary accounting may not be considered under this rule; and

(13) [~~(G)~~] any CPA review course offered by an educational institution or of a proprietary nature may not be considered in meeting the requirements under this rule.

[~~(3) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.~~]

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 November 14, 2002.

TRD-200207463
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 305-7848

22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58 concerning Definitions of Related Business Subjects.

The amendment to §511.58 will require 21 instead of 20 hours of upper division courses, will accept no more than 6 hours from any one area, will accept community college courses under certain conditions, require the business law course to study the Uniform Commercial Code, require the communications course to be business communications and will require completion of a three hour ethics course.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local government to do or not do anything.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that students' courses will be directed toward those areas the Board believes will be most beneficial to the student and to consumers.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not increase a student's course hours.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.254, which authorizes the Board to promulgate rules regarding education requirements.

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

§511.58. Definitions of Related Business Subjects.

(a) The board will accept not fewer than 21[~~20~~] passing semester hours of upper division courses as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. Not more than 6 semester hours taken in any subject area may be used to meet the minimum hour requirement. An individual who holds a baccalaureate degree from a recognized educational institution may take related business courses offered at an accredited community college, provided they are recognized as upper division courses for a 4-year BBA degree from an institution recognized by the board.[~~:~~]

(1) business[~~commercial~~] law, including study of the Uniform Commercial Code;

[~~(2) CPA coaching course in auditing, practice, theory, and business law (if the curriculum is developed and taught in a classroom environment by a faculty member under contract at the accredited college or university which is offering the course for credit and which is not a review of material covered in other courses for which credit was received by the applicant);~~]

(2) [~~(3)~~] economics;

(3) [~~(4)~~] management;

(4) [~~(5)~~] marketing;

(5) [~~(6)~~] business communications;

[~~(7) mathematics (as it pertains to business);~~]

(6) [~~(8)~~] statistics;

(7) [~~(9)~~] technical writing (covering subjects such as opinions, tax planning reports, and management advisory services reports and management letters);

(8) [~~(10)~~] finance;

(9) [~~(11)~~] information systems or technology[~~data processing~~]; and

(10) [~~(12)~~] other areas related to accounting.

(b) In addition to the 21 hours required in subsection (a) of this section, effective January 1, 2004, the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be taken at a recognized educational institution and should include ethical reasoning, integrity, objectivity, independence and other core values.

[~~(b) The board may treat one or more of the related business subjects as an accounting course if the accounting nature of the course is substantiated by the particular college or university, in writing, as being primarily accounting.~~]

(c) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

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 November 14, 2002.

TRD-200207464

Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 305-7848

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122 concerning Acceptable Work Experience.

The amendment to §511.122 will redefine what is required to supervise CPA applicants, defines non-routine accounting, recognizes that experience may be obtained in a non-CPA firm, deletes the definition of commercial enterprise practice of accountancy and defines acceptable industry work experience.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local government to do or not do anything additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that applicants will acquire work experience in professional settings that the board believes will be beneficial to applicants and consumers.

The probable economic cost to persons required to comply with the amendment will be zero because applicants are already required to obtain specific work experience.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.256 which authorizes the Board to promulgate rules regarding acceptable work experience.

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

§511.122. Acceptable Work Experience.

(a) Work experience shall be under the supervision of a CPA experienced in the non-routine accounting area assigned to the candidate and who holds[~~an individual holding~~] a current license issued by this board or by another state board of accountancy as defined in §511.124 of this title (relating to Acceptable Supervision).

(b) Non-routine accounting involves the use of independent judgment, applying entry level professional accounting knowledge to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) [~~(b)~~] All work experience, to be acceptable, shall be gained in the following categories or in any combination of these.

(1) Client practice of public accountancy. All work experience gained in a [~~CPA~~] firm in the client practice of public accountancy must be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. If such firm is a CPA firm it[~~Such firm~~] shall be [~~registered and~~] in good standing with the board, or, if the experience is gained in another state or territory, the firm shall be in good standing and in compliance with all laws applicable to CPA firms of that state or territory.

[~~(2) Commercial enterprise practice of public accounting. All work experience gained in a commercial enterprise engaged in the client practice of public accountancy shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Such commercial enterprise shall be in compliance with §501.40 of this title (relating to Registration Requirements).~~]

(2) [~~(3)~~] Industry. All work experience gained in industry shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. Acceptable industry work experience includes:[~~Professional services performed under this category include any services offered in the course of practicing public accountancy which may not be offered to the public.~~]

(A) internal auditor;

(B) staff, fund or tax accountant;

(C) accounting, financial or accounting systems analyst; and

(D) controller.

(3) [~~(4)~~] Government. All work experience gained in government shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A)-(E) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A)-(E) of this paragraph. Acceptable government work experience includes but is not limited to:

(A) employment in state government as an accountant or auditor at Salary Classification B6 or above, or a comparable rating;

(B) employment in federal government as an accountant or auditor at a GS Level 7 or above;

(C) employment as a special agent accountant with the FBI;

(D) military service, as an accountant or auditor as a Second[~~2nd~~] Lieutenant or above; and

(E) employment with other governmental entities as an accountant or auditor.

(4) [~~(5)~~] Law firm. All work experience gained in a law firm shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a CPA firm, shall be under the supervision of a CPA or an attorney, and shall be in one or more of the following areas:

(A) tax--planning, compliance and litigation and;[~~individual and corporate;~~]

(B) estate planning.[~~;~~]

[~~(C) state taxation relating to franchise; and~~]

[~~(D) tax controversy.~~]

(5) [~~(6)~~] Education. Work experience gained as an instructor at a college or university will qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses as approved by the board will be considered. All experience shall be supervised by the department chair or faculty member who is a[~~chairman who shall be a licensed~~] CPA.

(6) [~~(7)~~] Internship. The Board will consider, on a case-by-case basis, experience acquired through the accounting internship program, provided evidence is submitted demonstrating that the experience was comparable to that of a full-time staff accountant in non-routine accounting matters. If an accounting internship course is counted toward fulfilling the education requirement, the internship may not be used to fulfill the work experience requirement.

(7) [~~(8)~~] Other. Work experience gained in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a CPA upon certification by the person or persons supervising the candidate that the experience was of a non-routine accounting nature which continually required independent thought and judgment on important accounting matters.

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 November 14, 2002.

TRD-200207465
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 305-7848

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22 TAC §511.124

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.124 concerning Acceptable Supervision.

The amendment to §511.124 will require the supervising CPA to be experienced in non-routine accounting and be an actively licensed CPA, rewrite parts of the rule for clarity, and prohibit supervision in situations where independence is required.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that applicants will be supervised in a manner the Board believes will be beneficial to the applicant and to consumers.

The probable economic cost to persons required to comply with the amendment will be zero because applicants are currently required to be supervised.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the

amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.256 which authorizes the Board to promulgate rules regarding acceptable work experience.

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

§511.124. Acceptable Supervision.

(a) Acceptable supervision must be performed by a CPA experienced in the non-routine accounting area assigned to the candidate and who holds[~~an individual holding~~] an active license or permit in this state or another state.

(1) Supervision is provided whenever the person being supervised reports to, is instructed by, is reviewed by, and is evaluated directly by the supervisor. The supervisor in this capacity may be in an intermediate level of supervision above the applicant.[~~or may be a CPA in any registered accounting firm if the following conditions are met:~~]

(2) Where there is no CPA, acceptable supervision may be gained if the following conditions are met:

(A) a registered[~~the~~] CPA firm is engaged to provide supervision, review, and evaluation of workexperience; and

(B) the supervision, review, and evaluation of work is performed on a routine and recurring basis to permit the CPA firm [~~or other supervisor~~] to provide documentation of work experience;[~~.~~]

(C) the CPA firm does not perform attest services for which independence is required for the candidate or the candidate's employer; and

(D) the CPA assigned to provide the supervision is actively licensed and experienced to provide such supervision in the non-routine accounting area assigned to the candidate.

(3) [~~(2)~~] Telecommunications equipment and computers may be used to facilitate supervision. The board requires detailed documentation if such devices are used to facilitate supervision.

(b) It is the responsibility of the candidate to prove that supervision was adequate and effective in any situations inconsistent with[~~contrary to~~] the above examples.

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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Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §523.74

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.74, concerning Registry of Continuing Professional Education Sponsors.

The amendment to §523.74 will delete "National" from the rule caption, delete subsection (b) and rewrite it as new subsection (c) and describe the circumstances under which the Board will accept Continuing Professional Education (CPE) courses. The Board recently amended §523.63 to limit sponsors of acceptable CPE in Texas. The proposed amendments to §523.74 would identify one of the groups of accepted sponsors.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do or not do anything additional.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not require the state or local governments to do or not do anything additional.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not affect revenue.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that part of the rule will be clearer and CPE Sponsors will be aware of circumstances required for CPE to be accepted by the Board.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require anyone to do or not do anything additional.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2002. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not require small businesses to do or not do anything additional.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the

statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the Board to promulgate rules regarding continuing professional education.

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

§523.74. [~~National~~] Registry of Continuing Professional Education Sponsors.

(a) The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education Sponsors; however, organizations are not required to register with the National Association of State Boards of Accountancy.

(b) The board shall accept courses offered by CPE sponsors that have registered with the board only if:

(1) the CPE sponsor is a municipality of this state or an entity of the state or federal government; or

(2) the CPE sponsor offers CPE courses only to its own employees.

[~~(b) Organizations that elect to register with this board shall adhere to the obligations of the sponsor identified in §523.73 of this title (relating to Obligations of the Sponsor), and to the standards promulgated by this board.~~]

(c) CPE sponsors registered with the board shall:

(1) comply with all board standards for CPE sponsors; and

(2) cooperate with the board's sponsor review oversight program, including but not limited to providing information, records and access to programs and instructors as requested.

(d) The board may revoke the registration of any CPE sponsor registered under this section for failure to comply with board standards or board rules.

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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TRD-200207469
Amanda G. Birrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 305-7848

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 404. PROTECTION OF CLIENTS AND STAFF

SUBCHAPTER G. UNUSUAL INCIDENTS INVOLVING PERSONS SERVED BY TXMHMR FACILITIES

25 TAC §§404.241 - 404.249

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§404.241 - 404.249 of Chapter 404, Subchapter G, concerning unusual incidents involving persons served by TXMHMR facilities.

The reporting procedures contained in the subchapter have been incorporated into internal policy and the reasons for initially adopting the rules no longer exist.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments.

Pam Carley, director, Consumer Services and Rights Protection - Ombudsman, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is repeal of duplicative requirements. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or microbusinesses because the rules did not place requirements on small or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

These proposed sections would affect the Texas Health and Safety Code, §532.015(a).

§404.241. Purpose.
§404.242. Application.
§404.243. Definitions.
§404.244. Reporting Injuries and Incidents Involving Persons Served.

§404.245. Reporting a Criminal Act.
§404.246. Reporting An Unauthorized Departure Which Might Have Unusual Consequences.
§404.247. Exhibits.
§404.248. References.
§404.249. Distribution.

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 November 18, 2002.

TRD-200207517
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 206-5216

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CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES
SUBCHAPTER K. ABUSE, NEGLECT, AND EXPLOITATION IN TDMHMR FACILITIES

25 TAC §§417.501 - 417.518

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§417.501 - 417.518 of Chapter 417, Subchapter K, concerning abuse, neglect, and exploitation in TDMHMR facilities. New §§417.501 - 417.505 and 417.507 - 417.518 of Chapter 417, Subchapter K, concerning the same, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new sections governing the same matters.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to cost or revenue of the state or local governments.

Pamela Carley, director, Consumer Services and Rights Protection - Ombudsman, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected as a result of the adoption of the new rules is the promulgation of clear and distinct requirements for reporting allegations of abuse, neglect, and exploitation in TDMHMR facilities; for facilitating TDPRS investigations of allegations; and for ensuring the safety and protections of persons served involved in allegations. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is anticipated that the proposed repeals will not affect a local economy.

It is anticipated that the proposed repeals will not have an adverse economic effect on small businesses or microbusinesses because the rules did not place requirements on small or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; the Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; §48.255, which requires TDMHMR and the Texas Department of Protective and Regulatory Services (TDPRS) to develop joint rules to facilitate investigations in state mental health and mental retardation facilities; the Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse or neglect of a child receiving services in a facility operated by TDMHMR; §261.404, which requires TDMHMR and the Texas Department of Protective and Regulatory Services (TDPRS) to develop joint rules to facilitate investigations of a child receiving services in a facility operated by TDMHMR; and the Texas Civil Practice and Remedies Code, §81.006, which requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

These proposed sections would affect the Texas Human Resources Code, §48.255; the Texas Family Code, §261.404; and the Texas Civil Practice and Remedies Code, §81.006.

§417.501. Purpose.
§417.502. Application.
§417.503. Definitions.
§417.504. Prohibition and Definitions of Abuse, Neglect, and Exploitation.
§417.505. Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS).
§417.506. Reporting of Aggressive Action by Persons Served.
§417.507. Prohibition Against Retaliatory Action.
§417.508. Responsibilities of the Head of the Facility.
§417.509. Peer Review.
§417.510. Completion of the Investigation.
§417.511. Confidentiality of Investigative Process and Report.
§417.512. Classifications and Disciplinary Actions.
§417.513. Contractors.
§417.514. TDMHMR Administrative Responsibilities.
§417.515. Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation.
§417.516. Exhibits.
§417.517. References.
§417.518. Distribution.

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 November 18, 2002.

TRD-200207516
Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 206-5216

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25 TAC §§417.501 - 417.505, 417.507 - 417.518

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§417.501 - 417.505 and 417.507 - 417.518 of Chapter 417, Subchapter K, concerning abuse, neglect, and exploitation in TDMHMR facilities. Existing §§417.501 - 417.518 of Chapter 417, Subchapter K, concerning the same, which the new sections would replace, are contemporaneously proposed for repeal in this issue of the *Texas Register*.

The proposed new rules prescribe the procedures for reporting allegations of abuse, neglect, and exploitation of persons served in TDMHMR facilities to the Texas Department of Protective and Regulatory Services (TDPRS); for facilitating TDPRS investigations of allegations; and for ensuring the safety and protections of persons served involved in allegations. Additionally, the new rules prescribe the disciplinary action to be taken when an employee or agent is found to have committed abuse, neglect. or exploitation.

Certain definitions and procedures would be revised to either reference TDPRS rules governing investigations in TDMHMR facilities or to be consistent with TDPRS rules. The definition of "facility" would be modified to include any entity providing mental health or mental retardation services that is operated by TDMHMR. The definition of "non-serious physical injury" would be revised to provide the criteria for a non-serious physical injury (i.e., an injury requiring minor first aid) and to permit a registered nurse or advance practice nurse, as well as a physician, to apply the criteria to determine whether an injury is non-serious. The definition of "serious physical injury" would be revised to provide the criteria for a serious physical injury (i.e., any injury requiring medical intervention or hospitalization) and to provide an alternate criteria (i.e., any injury determined by a physician or advance practice nurse to be serious). Either criteria is sufficient to determine an injury as serious. The purpose of the alternate criteria would be to allow a physician or advance practice nurse to categorize a lesser injury as serious if the physician or advance practice nurse determines that it is appropriate to do so. For example, a bruise generally requires minor first aid, but a physician or advance practice nurse may determine a bruise on the face to be serious. A new definition of "medical intervention" would be added.

Reference to the Client Injury/Incident Report form would be changed to client injury assessment because the term is inclusive of an electronic reporting system, which some facilities began using on September 1, 2002. The sentence in §417.508(b)(1) relating to a physician's documentation during or following the examination would be deleted because it is duplicative of the requirement in the previous sentence, which is to document the examination and treatment of abuse/neglect-related injuries on the client injury assessment. Additionally, the new rules would not include data collection requirements as specified in the rules proposed for repeal.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed new rules are in effect, enforcing or administering the rules does not have foreseeable significant implications relating to cost or revenue of the state or local governments because the proposed new rules are not significantly different from the rules proposed for repeal.

Pamela Carley, director, Consumer Services and Rights Protection - Ombudsman, has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit expected is the promulgation of clear and distinct requirements for reporting allegations of abuse, neglect, and exploitation in TDMHMR facilities; for facilitating TDPRS investigations of allegations; and for ensuring the safety and protections of persons served involved in allegations. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed new rules because the rules do not impose any more requirements on such persons than those contained in the rules proposed for repeal.

It is anticipated that the proposed new rules will not affect a local economy because the rules do not significantly alter the requirements contained in the rules proposed for repeal.

It is anticipated that the proposed new rules will not have an adverse economic effect on small businesses or microbusinesses because the rules do not place requirements on small or microbusinesses.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority; the Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; §48.255, which requires TDMHMR and the Texas Department of Protective and Regulatory Services (TDPRS) to develop joint rules to facilitate investigations in state mental health and mental retardation facilities; the Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse or neglect of a child receiving services in a facility operated by TDMHMR; §261.404, which requires TDMHMR and the Texas Department of Protective and Regulatory Services (TDPRS) to develop joint rules to facilitate investigations of a child receiving services in a facility operated by TDMHMR; and the Texas Civil Practice and Remedies Code, §81.006, which requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

These proposed sections would affect the Texas Human Resources Code, §48.255; the Texas Family Code, §261.404; and the Texas Civil Practice and Remedies Code, §81.006.

§417.501. Purpose.

The purpose of this subchapter is to prescribe procedures:

(1) for effective reporting of allegations of abuse, neglect, and exploitation;

(2) for ensuring the safety and protection of persons served involved in allegations;

(3) for facilitating Texas Department of Protective and Regulatory Services investigations of allegations;

(4) for facilitating peer review of allegations involving clinical practice;

(5) for notifying appropriate licensing authorities and other individuals regarding issues relating to an allegation;

(6) for contesting the Adult Protective Services (APS) review of a finding of an investigation;

(7) for ensuring proper disciplinary action is taken; and

(8) for training staff in identifying, reporting, and preventing abuse, neglect, and exploitation.

§417.502. Application.

(a) This subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation and their agents.

(b) All facilities are responsible for amending their contracts to ensure contractors' compliance as specified in §417.513 of this title (relating to Contractors).

(c) This subchapter does not apply to:

(1) psychiatric hospitals licensed by the Texas Department of Health (TDH) under Chapter 577 of the Texas Health and Safety Code; or

(2) state-funded community hospitals, which are inpatient mental health facilities licensed by the Texas Department of Health under the Texas Health and Safety Code, Chapter 242, or operated by a university health system and exempted from licensure, that provides TDMHMR-funded inpatient mental health services pursuant to a contract between TDMHMR and a local authority.

§417.503. Definitions.

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

(1) Adult Protective Services (APS) investigator--An employee of the Texas Department of Protective and Regulatory Services (TDPRS) with expertise and demonstrated competence in conducting investigations.

(2) Agent--Any individual not employed by the facility but working under the auspices of the facility, (e.g., a volunteer, a student).

(3) Allegation--A report by an individual suspecting or having knowledge that a person served has been or is in a state of abuse, neglect, or exploitation as defined in this subchapter.

(4) Child--A person served under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(5) Clinical practice--Relates to the demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described, respectively, in the Nursing Practice Act, Vocational Nurse Act, Dental Practice Act, Pharmacy Practice Act, or Medical Practice Act.

(6) Confirmed--Term used to describe an allegation which is determined to be supported by the preponderance of evidence.

(7) Contractor--Any organization, entity, or individual who contracts with a facility to provide mental health and mental retardation services. The term includes a local independent school district with which a facility has a memorandum of understanding (MOU) for educational services.

(8) Department--The Texas Department of Mental Health and Mental Retardation (TDMHMR).

(9) Designee--A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities of the head of the facility.

(10) Facility--A state hospital, state school, state center, or other entity providing mental retardation or mental health services that is operated by the Texas Department of Mental Health and Mental Retardation.

(11) Guardian--An individual appointed and qualified as a guardian of the person under the Probate Code, Chapter 13.

(12) Head of the facility--The superintendent or executive director of a facility, or designee. (If the superintendent or executive director is the alleged perpetrator, then the designee assumes all responsibilities of the head of the facility described in this subchapter.)

(13) Incitement--To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(14) Inconclusive--Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

(15) Non-serious physical injury--Any injury requiring minor first aid and determined not to be serious by a registered nurse, advance practice nurse, or physician.

(16) Medical intervention--Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician's assistant, or advance practice nurse. For the purposes of this subchapter, the term does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication.

(17) Office of Consumer Services and Rights Protection - Ombudsman--The office located at the Texas Department of Mental Health and Mental Retardation's Central Office.

(18) Peer review--A review of clinical and/or medical practice(s) by peer physicians; a review of clinical and/or dental practice(s) by peer dentists; a review of clinical and/or pharmacy practice(s) by peer pharmacists; or a review of clinical and/or nursing practice(s) by peer nurses.

(19) Perpetrator--A person who has committed an act of abuse, neglect, or exploitation.

(20) Perpetrator unknown--Term used to describe instances in which abuse, neglect, or exploitation is evident but positive identification of the responsible person(s) cannot be made, and in which self-injury has been eliminated as the cause.

(21) Person served--Any person registered or assigned in the Client Assignment and Registration (CARE) system who is receiving services from a facility or contractor.

(22) Preponderance of evidence--The greater weight of evidence, or evidence which is more credible and convincing to the mind.

(23) PMAB or Prevention and Management of Aggressive Behavior--The department's proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and for staff from acts or potential acts of aggression.

(24) Reporter--The individual who reports an allegation of abuse, neglect, or exploitation.

(25) Retaliatory action--Any action intended to inflict emotional or physical harm or inconvenience on a person that is taken because the person has reported abuse, neglect, or exploitation. This includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

(26) Review authority--An individual or panel of individuals who, at the discretion and request of the head of the facility, reviews

selected cases of abuse, neglect, or exploitation, including those that are confirmed, unconfirmed, unfounded, or inconclusive. The review authority may include a member of the facility's public responsibility committee.

(27) Serious physical injury--Any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or advance practice nurse.

(28) Sexual exploitation--A pattern, practice, or scheme of conduct against a person served, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any individual. The term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

(29) Sexually transmitted disease--Any infection, with or without symptoms or clinical manifestations, that can be transmitted from one person to another by sexual contact.

(30) TDPRS--The Texas Department of Protective and Regulatory Services.

(31) Unconfirmed--Term used to describe an allegation in which a preponderance of evidence exists to prove that abuse, neglect, or exploitation did not occur.

(32) Unfounded--Term used to describe an allegation that is spurious or patently without factual basis.

§417.504. Prohibition and Definitions of Abuse, Neglect, and Exploitation.

(a) Abuse, neglect, and exploitation of any person served is prohibited.

(b) Consistent with Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs), the terms "abuse," "neglect," and "exploitation" are defined as follows when the alleged perpetrator is an employee, agent, contractor, or is unknown.

(1) Abuse is:

(A) physical abuse, which is:

(i) an act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(ii) an act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in a physical injury to a person served; or

(iii) the use of chemical or bodily restraints on a person served not in compliance with federal and state laws and regulations, including:

(I) Chapter 405, Subchapter F of this title (concerning Voluntary and Involuntary Behavioral Interventions in Mental Health Programs); and

(II) Chapter 405, Subchapter H of this title (concerning Behavior Management - Facilities Serving Persons with Mental Retardation);

(B) sexual abuse, which is any sexual activity involving an employee, agent, or contractor and a person served, including but not limited to:

(i) kissing a person served with sexual intent;

(ii) hugging a person served with sexual intent;

(iii) stroking a person served with sexual intent;

(iv) fondling a person served with sexual intent;

(v) engaging in with a person served:

(I) sexual conduct as defined in the Texas Penal Code, §43.01; or

(II) any activity that is obscene as defined in the Texas Penal Code, §43.21;

(vi) requesting, soliciting, or compelling a person served to engage in:

(I) sexual conduct as defined in the Texas Penal Code, §43.01; or

(II) any activity that is obscene as defined in the Texas Penal Code, §43.21;

(vii) in the presence of a person served:

(I) engaging in or displaying any activity that is obscene, as defined in the Texas Penal Code §43.21; or

(II) requesting, soliciting, or compelling another person to engage in any activity that is obscene, as defined in the Texas Penal Code §43.21;

(viii) committing sexual exploitation, as defined in §417.503 of this title (relating to Definitions), against a person served;

(ix) committing sexual assault as defined in the Texas Penal Code §22.011, against a person served;

(x) committing aggravated sexual assault as defined in the Texas Penal Code, §22.021, against a person served; and

(xi) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping, or depicting of a person served if the employee, agent, or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in the Texas Penal Code, §43.21, or is pornographic; and

(C) verbal/emotional abuse, which is any act or use of verbal or other communication, including gestures, to:

(i) curse, vilify, or degrade a person served; or

(ii) threaten a person served with physical or emotional harm.

(2) Neglect is a negligent act or omission by any individual responsible for providing services to a person served, which caused or may have caused physical or emotional injury or death to a person served or which placed a person served at risk of physical or emotional injury or death. Neglect includes, but is not limited to, the failure to:

(A) establish or carry out an appropriate individual program plan or treatment plan for a person served;

(B) provide adequate nutrition, clothing, or health care to a specific person served; or

(C) provide a safe environment for a specific person served, including the failure to maintain adequate numbers of appropriately trained staff.

(3) Exploitation is the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.

(c) Abuse, neglect, or exploitation does not include:

(1) the proper use of restraints and seclusion, including PMAB, and the approved application of behavior modification techniques as described in:

(A) Chapter 405, Subchapter F of this title, relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs;

(B) Chapter 404, Subchapter E of this title, relating to Rights of Persons Receiving Mental Health Services; and

(C) Chapter 405, Subchapter H of this title, relating to Behavior Management--Facilities Serving Persons With Mental Retardation;

(2) other actions taken in accordance with the rules of the department;

(3) such actions as an employee/agent/contractor may reasonably believe to be immediately necessary to avoid imminent harm to self, persons served, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, including PMAB; or

(4) general complaints (e.g., regarding rights violations; theft of property; the daily administrative operations of a facility; the failure to carry out individual program/treatment plans or the failure to maintain adequate numbers of appropriately trained staff) that do not relate to a specific incident or allegation involving a specific person served. (Within 24 hours of receipt of such a complaint, the APS investigator refers the complaint to the head of the facility using the Adult Protective Services Referral Form, who ensures the complaint is investigated administratively by the head of the facility, the facility rights officer, or other appropriate parties.)

§417.505. Reporting Responsibilities of All TDMHMR Employees, Agents, and Contractors: Reports to Texas Department of Protective and Regulatory Services (TDPRS).

(a) Reporting suspected abuse, neglect, or exploitation.

(1) Each employee/agent/contractor who suspects or has knowledge that a person served is being abused, neglected, or exploited shall make a verbal report to TDPRS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, by calling 1-800-647-7418.

(2) Each employee/agent/contractor who suspects or has knowledge that a person served has been abused, neglected, or exploited, including prior to admission, during an absence, or while in residence at the facility, shall make a verbal report to TDPRS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, by calling 1-800-647-7418.

(3) If the person making the allegation is not an employee/agent/contractor (e.g., a person served, a guest), staff shall assist the person in making the report, if necessary.

(b) Any pregnancy of a person served, provided there is medical verification that there is reasonable expectation that conception could have occurred while the person was a resident of the facility or contractor, or any diagnosis of a sexually transmitted disease in a person served which could have occurred while the person was a resident of the facility or contractor, shall be reported in accordance with this subchapter as possible abuse or neglect.

(c) If an aggressive action by a person served, including nonconsensual sexual activity between persons served, occurs as a result of possible neglect, then the action is reported as neglect in accordance with this subchapter.

(d) Failure to make reports as required by this section within the allotted time period without sufficient justification is considered a violation of this section and makes the employee/agent subject to disciplinary action and possible criminal prosecution. An employee/agent found to have made a false statement of fact during an investigation is also subject to disciplinary action.

(e) In addition to reporting to TDPRS, employees shall take appropriate steps to secure evidence related to an allegation, if any, consistent with "Guidelines for Securing Evidence," referenced as Exhibit A in §417.516 of this title (relating to Exhibits).

§417.507. Prohibition Against Retaliatory Action.

(a) Retaliatory action. Any employee/agent or any individual affiliated with an employee/agent is prohibited from engaging in retaliatory action against an employee/agent or person served who in good faith reports an allegation.

(1) Any person who believes he or she is being subjected to retaliatory action upon reporting an allegation, or who believes an allegation has been ignored without cause, should immediately contact the head of the facility. The person may also contact:

(A) the Office of Consumer Services and Rights Protection - Ombudsman at the dedicated toll-free number for facilities at 1-800-252-8154; or

(B) the Office of the Attorney General at 512/463-2185 (Consumer Protection Division) which, under the Whistleblower Act, Texas Civil Statutes, Article 6252-16a, may prosecute a supervisor who suspends or terminates a public employee for reporting a violation of law to law enforcement authorities.

(2) Retaliatory action against a person served which might be considered abuse, neglect, or exploitation is reported to TDPRS in accordance with this subchapter.

(b) Disciplinary action. Any employee/agent found to have engaged in retaliatory action is subject to disciplinary action.

§417.508. Responsibilities of the Head of the Facility.

(a) All allegations are investigated in accordance with Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs).

(b) Immediately upon notification of an allegation by the APS investigator, the head of the facility takes measures to ensure the safety of the alleged victim(s), including the following actions:

(1) As necessary, the head of the facility ensures immediate and on-going medical attention is provided to the alleged victim and any other person served involved in the incident (e.g., examination for and treatment of injuries, screening and treatment for sexually transmitted diseases). The examination and treatment of abuse/neglect-related injuries is documented on the client injury assessment, with a copy submitted to the APS investigator. A registered nurse, advance practice nurse, or physician, as appropriate, must complete the "Seriousness of Physical Injury" portion of the Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit B in §417.516 of this title (relating to Exhibits). All issues relating to clinical practice are referred to the medical/clinical director for consultation.

(2) The head of the facility ensures the protection of the alleged victim in keeping with "Guidelines for Separation of Alleged Victim and Alleged Perpetrator During Abuse/Neglect Investigations" (referenced as Exhibit C in §417.516 of this title (relating to Exhibits)), which may include, but is not limited to, the following actions:

(A) reassignment of the employee/agent to a non-direct care area;

(B) allowing the employee/agent to remain in his or her current position pending investigation;

(C) granting the employee emergency leave; or

(D) suspending the agent pending investigation.

(3) As necessary, the head of the facility ensures psychological attention is provided to the alleged victim and any other person served who may have witnessed or been affected by the incident. The psychological attention shall be provided in a timely manner while preserving the integrity of the investigation.

(4) If the alleged perpetrator is known but is not an employee/agent (e.g., family member, friend, guest), the head of the facility imposes a restriction on the alleged perpetrator's access to the alleged victim pending investigation. The restriction should be documented in the record of the alleged victim.

(5) Immediately, but in no case later than 24 hours after notification of an allegation, the head of the facility notifies the following individuals of the allegation:

(A) the alleged victim (if appropriate);

(B) the guardian; and

(C) in cases in which the alleged victim is an adult who is unable to authorize the disclosure of protected health information and who does not have a guardian, any other person designated as the alleged victim's correspondent who receives all other information about the alleged victim (e.g., spouse, parent).

(c) The head of the facility designates a contact staff person to coordinate with the APS investigator to ensure private interview space, private telephones, and employees/agents are available to the APS investigator. The head of the facility shall require employees/agents to cooperate with APS investigators so that the investigators are afforded immediate access to all records and evidence and provided keys as are necessary to conduct an investigation in a timely manner. The head of the facility shall assist in whatever way possible to make employees/agents who are relevant to the investigation available in an expeditious manner. Employees/agents who fail to cooperate with an investigation are subject to disciplinary action.

(d) Reports regarding alleged sexual exploitation committed by a mental health services provider are made by the head of the facility to the prosecuting attorney in the county in which the alleged sexual exploitation occurred and any state licensing board that has responsibility for the mental health services provider's licensing in accordance with the Texas Civil Practice and Remedies Code, §81.006. A copy of the Texas Civil Practice and Remedies Code, §81.001 and §81.006 is referenced as Exhibit D in §517.516 of this title (relating to Exhibits).

(e) The head of the facility at facilities with intermediate care facilities for the mentally retarded (ICF/MR) must report those allegations that are considered reportable incidents to the Texas Department of Human Services (TDHS), ICF/MR/RC Department in accordance with the memorandum of understanding, referenced as Exhibit E in §417.516 of this title (relating to Exhibits), between the department, TDHS, and Texas Department of Protective and Regulatory Services.

§417.509. Peer Review.

(a) If the allegation involves the actions of a physician, dentist, pharmacist, registered nurse, or licensed vocational nurse, then a determination of whether the allegation involves the clinical practice, as defined in §417.503 of this title (relating to Definitions), of the physician, dentist, pharmacist, registered nurse, or licensed vocational nurse is made by the head of the facility, the APS investigator, and the facility medical\dental\nursing\pharmacy director, as appropriate to the discipline involved.

(1) If the allegation does not involve clinical practice the APS investigator pursues an investigation.

(2) If the allegation does involve clinical practice the APS investigator refers the allegation to the head of the facility, who immediately refers the allegation to the facility medical\dental\nursing\pharmacy director, as appropriate to the discipline involved, for review for possible peer review as follows:

(A) for allegations involving physicians, pharmacists, and dentists, Investigative Medical Peer Review Operating Instruction 417-19; and

(B) for allegations involving registered nurses and licensed vocational nurses, Investigative Nursing Peer Review Operating Instruction 408-1.

(3) If the allegation involves clinical practice and non-clinical issues, then the allegation is referred to peer review in accordance with paragraph (2) of this subsection and is investigated by the APS investigator.

(4) If a determination of whether the allegation involves clinical practice cannot be made, then:

(A) the allegation is referred to peer review in accordance with paragraph (2) of this subsection and is investigated by the APS investigator; or

(B) the regional APS program administrator and the head of the facility jointly agree to use a previously mutually agreed-upon physician/dental/nursing/pharmacy consultant, as appropriate to the discipline involved, to make the final determination within 24 hours. The facility is responsible for the costs of the consultant's services.

(b) If the allegation involves the facility medical\dental\nursing\pharmacy director, the head of the facility refers the allegation to the TDMHMR medical\dental\nursing\pharmacy director, as appropriate to the discipline involved, for review for possible peer review in accordance with subsection (a)(2)(A) or (B) of this section. If the allegation involves the TDMHMR pharmacy director, then the head of the facility refers the allegation to the TDMHMR medical director for review for possible peer review in accordance with subsection (a)(2)(A) of this section.

(c) All allegations involving physicians, pharmacists, nurses (RN or LVN), and dentists, regardless of type or clinical/non-clinical practice, are reported by the head of the facility to the TDMHMR medical\nursing\dental\pharmacy director, as appropriate to the discipline, within five working days of the allegation. The report may be brief, but will include;

(1) the date of the alleged incident;

(2) name of the alleged victim and alleged perpetrator;

(3) a brief description of the incident; and

(4) a brief description of the investigation planned.

(d) The TDMHMR medical\dental\nursing\pharmacy director, as appropriate to the discipline involved, ensures that reports of allegations of abuse and neglect are made, if required by law, to the licensing authority for the discipline under review, i.e., the Texas Board of Medical Examiners for physicians, the State Board of Dental Examiners for dentists, the Texas State Board of Pharmacy, the Board of Nurse Examiners for the State of Texas for registered nurses, or the Board of Vocational Nurse Examiners for licensed vocational nurses.

(e) Upon receipt of an allegation involving physician misconduct or malpractice, the TDMHMR medical director reports the allegation to the Texas Board of Medical Examiners in accordance with §533.006 of the Texas Health and Safety Code and the memorandum of understanding, referenced as Exhibit F in §417.516 of this title (relating to Exhibits), between the department, TDPRS, and the Texas Board of Medical Examiners.

(f) When an allegation is determined to involve the clinical practice of a physician, nurse (RN or LVN), pharmacist, or dentist, then the head of the facility ensures that the alleged victim and/or guardian or parent (if the alleged victim is a child) are informed that the allegation has been referred for peer review.

§417.510. Completion of the Investigation.

(a) The APS investigator sends a copy of the investigative report to the head of the facility in accordance with Chapter 711, Subchapter G of Title 40 (concerning Release of Report and Findings). The investigative report includes:

(1) a statement of the allegation(s);

(2) a summary of the investigation;

(3) an analysis of the evidence, including:

(A) factual information related to what occurred;

(B) how the evidence was weighed; and

(C) what testimony was considered credible;

(4) a finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;

(5) recommendations resulting from the investigation;

(6) the name of the perpetrator or alleged perpetrator or the designation of "perpetrator unknown";

(7) a recommended classification for each allegation as described in §417.512(a) of this title (relating to Classifications and Disciplinary Actions);

(8) the exam and treatment of abuse/neglect-related injuries documented on the client injury assessment;

(9) photographs relevant to the investigation, including photographs showing the existence of injuries or the non-existence of injuries, when appropriate;

(10) all witness statements and supporting documents; and

(11) a signed and dated Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit B in §417.516 of this title (relating to Exhibits), reflecting the information contained in paragraphs (4), (6), and (7) of this section.

(b) Upon receiving the investigative report from the APS investigator, the head of the facility may submit the report and concerns articulated by the APS investigator to a review authority for review.

(1) The review authority may interview witnesses in the course of its review.

(2) If the review authority is reviewing a case determined by the APS investigator to be unfounded, it may consult with the APS investigator if appropriate. If the review authority determines that there is good cause to reopen the investigation (e.g., new evidence or information that was not previously available during the investigation), the head of the facility may contact the local APS supervisor to request that the case be re-opened.

(3) The review authority submits a report of its review to the head of the facility.

(c) The head of the facility:

(1) reviews the APS investigator's report;

(2) reviews the review authority's report, if applicable; and

(3) interviews witnesses, if necessary.

(d) The rights of employees who appear before the review authority or the head of the facility are outlined in "Procedures in Facility Abuse, Neglect, and Exploitation Investigations and *Thurston* Rebuttal Proceedings," referenced as Exhibit G in §417.516 of this title (relating to Exhibits).

(e) The head of the facility may not change a confirmed finding. However, if the head of the facility disagrees with the APS investigator's finding of unconfirmed, inconclusive, or unfounded, the head of the facility may elect to change the finding to confirmed. If the head of the facility elects to change the finding to confirmed, then the confirmed finding cannot be appealed to TDPRS.

(f) If the head of the facility believes that the methodology used in conducting the investigation was flawed (e.g., failure to collect or consider evidence, such as witnesses' statement, progress notes, test results), the head of the facility may request a review in accordance with Chapter 711, Subchapter K of Title 40 (concerning Requesting a Review of Finding if You Are the Administrator or Contractor CEO).

(g) If the head the facility disagrees with:

(1) the APS investigator's finding, the head of the facility may contest the finding by requesting a review in accordance with Chapter 711, Subchapter K of Title 40 (concerning Requesting a Review of Finding if You Are the Administrator or Contractor CEO).

(2) the APS review as described in §711.1007 of Title 40 (relating to How is the Review of a Finding Conducted?), the head of the facility may contest the review by apprising the TDMHMR director of state mental health facilities or state mental retardation facilities, as appropriate. If the TDMHMR director also disagrees with the APS review, the TDMHMR director may request a decision by the TDMHMR commissioner and the TDPRS executive director. The decision of the TDMHMR commissioner and the TDPRS executive director may not be contested.

(h) The final finding is the last uncontested finding, which may be:

(1) the APS investigator's finding in accordance with subsection (a)(4) of this section;

(2) the head of the facility's confirmed finding in accordance with subsection (e) of this section;

(3) the APS finding in accordance with subsection (g)(1) of this section; or

(4) the TDMHMR commissioner and the TDPRS executive director's decision in accordance with subsection (g)(2) of this section.

(i) Within 30 calendar days of receipt of the investigative report or the final finding, the head of the facility is responsible for completing the Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit B in §417.516 of this title (relating to Exhibits), and ensuring the information is entered into the Client Abuse and Neglect Reporting System (CANRS).

(j) The APS investigator notifies the reporter in accordance with §711.609 of Title 40 (relating to How and When is the Reporter Notified of the Finding?).

(k) The head of the facility ensures that the (alleged) victim or guardian is promptly notified of:

(1) the final finding and if any previous findings were contested;

(2) the method of appealing the final finding as described in Chapter 711, Subchapter M of Title 40 (concerning Requesting an Appeal if You Are the Reporter, Alleged Victim, Legal Guardian, or With Advocacy, Incorporated), if the final finding was not made by the head of the facility as provided by subsection (e) of this section; and

(3) the right to receive a copy of the investigative report in accordance with §417.511(b) of this title (relating to Confidentiality of Investigative Process and Report) upon request.

(l) The head of the facility ensures that any other person who was previously notified of the allegation (as provided for in §417.508(b)(5)(C) of this title (relating to Responsibilities of the Head of the Facility)) is promptly notified of the final finding.

(m) The head of the facility informs the perpetrator or alleged perpetrator of the final finding.

(n) If the (alleged) perpetrator and (alleged) victim will again be in close proximity following an investigation, the head of the facility is responsible for ensuring appropriate reconciliation efforts are considered, offered, and provided in accordance with "Therapeutic Reconciliation," referenced as Exhibit H in §417.516 of this title (relating to Exhibits).

(o) The head of the facility shall establish a mechanism for evaluating any recommendations concerning problematic patterns or trends identified during the investigation by the APS investigator and the review authority, if applicable.

§417.511. Confidentiality of Investigative Process and Report.

(a) The reports, records, and working papers used by or developed in the investigative process, and the resulting investigative report, are confidential and may be disclosed only as allowed by law or Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs).

(b) Upon request, the head of the facility will provide a copy of the investigative report to the (alleged) victim or guardian with the identities of other persons served and any information determined confidential by law concealed. The head of the facility may charge a reasonable fee for providing a copy of the investigative report.

(c) Advocacy, Inc. is entitled to access the records of the (alleged) victim in accordance with 42 USC §10805(a)(4) (Protection and Advocacy for Mentally Ill Individuals) or 42 USC §15043(a)(2)(I) (Protection and Advocacy of Individual Rights).

§417.512. Classifications and Disciplinary Actions.

(a) The APS investigator recommends a classification for each allegation as follows:

(1) Class I Abuse, if the allegation involves:

(A) physical abuse which caused or may have caused serious physical injury; or

(B) sexual abuse.

(2) Class II Abuse, if the allegation involves:

(A) physical abuse which caused or may have caused non-serious physical injury; or

(B) exploitation.

(3) Class III Abuse, if the allegation involves verbal/emotional abuse.

(4) Neglect, if the allegation involves neglect.

(b) Under no circumstances may the head of the facility change a recommended classification to a lower classification (e.g., Class I to Class II). However, the head of the facility may change a recommended classification to a higher classification (e.g., Class II to Class I) in accordance with the evidence and subsection (a) of this section.

(c) The head of the facility is responsible for taking prompt and proper disciplinary action when an allegation involving an employee/agent is confirmed.

(1) Disciplinary action against an employee is based on criteria including, but not limited to:

(A) the seriousness of the abuse, neglect, and/or exploitation;

(B) the circumstances surrounding the incident;

(C) the employee's work record; and

(D) repeat violations and the length of time between violations.

(2) When an allegation has been confirmed the head of the facility takes the following disciplinary action.

(A) Class I Abuse. The employee/agent is dismissed.

(B) Class II Abuse.

(i) The employee is placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the Fair Labor Standards Act (FLSA), the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

(ii) The agent is dismissed.

(C) Class III Abuse or Neglect.

(i) The employee receives a written reprimand which becomes a part of the employee's personnel file, or the employee is placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the FLSA the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

(ii) The agent is dismissed.

(d) When disciplinary action is taken against an employee based on confirmed abuse or neglect, the head of a facility notifies the employee in writing of the disciplinary action taken and any right to a grievance hearing the employee may have under the department's internal policies and procedures relating to employee grievances. If the employee files a complaint in response to a written reprimand resulting from confirmed abuse or neglect, or if the employee files a grievance in response to disciplinary action resulting from confirmed abuse or neglect, the head of the facility, upon the employee's written request, provides the employee with a copy of or access to the investigative report. Before receiving or inspecting the report, the employee is required to complete a document acknowledging that the report's content must be kept confidential. Additional documentary evidence, if any, may be accessed by the employee in accordance with procedures outlined in the Human Resources Operating Instruction 407-12, §18 (relating to Employee Grievances).

(e) When disciplinary action is taken against an agent as a result of confirmed abuse or neglect, the head of a facility notifies the agent in writing of the disciplinary action taken.

(f) The head of the facility ensures the victim or guardian, or parent if the victim is a child is promptly notified of:

(1) the disciplinary action taken against the employee/agent;

(2) the employee's right to request a grievance hearing to dispute the disciplinary action if the disciplinary action was not a written reprimand; and

(3) an offer to inform the victim or guardian, or parent if the employee files a grievance if such information is requested.

(g) If Advocacy, Inc. informs the head of the facility that it represents the victim of confirmed Class I abuse, the head of the facility will notify Advocacy, Inc. if the dismissed employee requests a grievance hearing.

(h) If requested by the head of the facility, the APS investigator who conducted the investigation shall provide consultation and testimony at the grievance hearing.

(i) The head of the facility provides the APS director with a copy of hearings officers' decisions of employee grievances that involve TDPRS investigations.

§417.513. Contractors.

The head of the facility is responsible for requiring that all of the facility's contractors comply with this subchapter with the exception of §417.512 of this title (relating to Classifications and Disciplinary Actions) and §417.514 of this title (relating to TDMHMR Administrative Responsibilities). The head of the facility shall ensure that each contractor is provided a copy of TDPRS's rules governing investigations in TDMHMR facilities and related programs, 40 TAC Chapter 711. Each contract shall describe the procedural responsibilities of the facility and the contractor regarding at least the following:

(1) the reporting of allegations of abuse, neglect, and exploitation;

(2) the safety and protection of persons served involved in allegations;

(3) the facilitation of proper investigations/peer reviews and the preservation of the integrity of investigations/peer reviews;

(4) the notification of appropriate licensing authorities and other individuals regarding issues relating to allegations;

(5) taking proper disciplinary action or other appropriate action; and

(6) staff training in identifying, reporting, and preventing abuse, neglect, and exploitation.

§417.514. TDMHMR Administrative Responsibilities.

TDMHMR will implement systems to ensure that:

(1) former employees with confirmed Class I Abuse and former employees who were dismissed because of confirmed abuse or neglect and whose dismissal is upheld at a grievance hearing or who fail to request a grievance hearing are not eligible for reemployment at any facility; and

(2) former employees with confirmed abuse, neglect, or exploitation regardless of classification are not eligible for reemployment at any TDMHMR-operated ICF/MR facility.

§417.515. Staff Training in Identifying, Reporting, and Preventing Abuse, Neglect, and Exploitation.

(a) This subchapter shall be thoroughly and periodically explained to all employees/agents of each facility as follows:

(1) All new employees/agents who will provide direct services to persons served and all new employees/agents who will routinely perform job duties in proximity to persons served shall receive training on the contents of this subchapter prior to performing their duties and annually thereafter. The training will include:

(A) an explanation and examples of the acts and signs of possible abuse, neglect, and exploitation;

(B) the effects of abuse, neglect, and exploitation;

(C) an explanation that abuse, neglect, and exploitation of persons served is prohibited;

(D) the disciplinary consequences for:

(i) committing abuse, neglect, and exploitation; and

(ii) failure to cooperate with an investigation;

(E) the procedures for reporting allegations of abuse, neglect, and exploitation;

(F) a definition of retaliatory action, an explanation that retaliatory action is prohibited, and an explanation of the consequences of retaliatory action;

(G) practices and attitudes that support the prevention of abuse, neglect, and exploitation; and

(H) PMAB.

(2) All new employees/agents who will not provide direct services to persons served and who will not routinely perform any job duty in proximity to persons served shall receive training on the contents of this subchapter within two months of employment or placement and every two years thereafter. The training will include:

(A) an explanation and examples of the acts and signs of possible abuse, neglect, and exploitation;

(B) the effects of abuse, neglect, and exploitation;

(C) an explanation that abuse, neglect, and exploitation of persons served is prohibited;

(D) the disciplinary consequences for:

(i) committing abuse, neglect, and exploitation; and

(ii) failure to cooperate with an investigation;

(E) the procedures for reporting allegations of abuse, neglect, and exploitation; and

(F) a definition of retaliatory action, an explanation that retaliatory action is prohibited, and an explanation of the consequences of retaliatory action.

(3) Physicians shall receive additional training on how to identify signs and symptoms of abuse, neglect, and exploitation.

(4) All new employees who will provide direct services to persons served shall receive training on the procedures for securing evidence in accordance with "Guidelines for Securing Evidence," referenced as Exhibit A in §417.516 of this title (relating to Exhibits) prior to performing their duties and annually thereafter.

(5) Within 90 days after the effective date of this subchapter, the head of the facility shall inform all current employees/agents/contractors of changes to policies and procedures as a result of this subchapter.

(b) All supervisory personnel have a continuing responsibility to keep employees/agents informed of current rules and policies governing abuse, neglect, and exploitation and to ensure that employees/agents receive training in accordance with this section.

(c) Instructional materials, audiovisual, and/or other training aids concerning this subchapter are developed and available through the TDMHMR System Human Resource Development, Central Office.

(d) Records of all training content and activities related to course titles shall be kept by each facility. Records shall also be kept on each employee/agent receiving training in compliance with this section, which include:

(1) the employee/agent's name and signature;

(2) the course title;

(3) the result of any assessment;

(4) the date of the training; and

(5) the name of the person facilitating, monitoring, or conducting the training.

§417.516. Exhibits.

The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668.

(1) Exhibit A--"Guidelines for Securing Evidence";

(2) Exhibit B--Client Abuse and Neglect Report (AN-1-A) form;

(3) Exhibit C--"Guidelines for Separation of Alleged Victim and Alleged Perpetrator During Abuse/Neglect Investigations";

(4) Exhibit D--Texas Civil Practice and Remedies Code, §81.001 and §81.006;

(5) Exhibit E--Memorandum of Understanding between TDMHMR, TDHS, and TDPRS concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community MHMR Centers with Intermediate Care Facilities for the Mentally Retarded (ICF/MR);

(6) Exhibit F--Memorandum of Understanding between TDPRS, Texas Board of Medical Examiners, and TDMHMR concerning Mandatory Reporting of Physician Misconduct or Malpractice;

(7) Exhibit G--"Procedures in Facility Abuse, Neglect, and Exploitation Investigations and Thurston Rebuttal Proceedings"; and

(8) Exhibit H--"Therapeutic Reconciliation."

§417.517. References.

Reference is made to the following statutes and rules and operating instructions of the department:

(1) Texas Health and Safety Code, Chapters 242, 481, and 577;

(2) Probate Code, Chapter 13;

(3) Whistleblower Act, Texas Civil Statutes, Article 6252-16a;

(4) Texas Penal Code, §§22.011, 22.021, 43.01, and 43.21;

(5) Texas Family Code, Chapter 31;

(6) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(7) Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs;

(8) Chapter 405, Subchapter H of this title (relating to Behavior Management--Facilities Serving Persons With Mental Retardation);

(9) Chapter 711 of Title 40 (concerning Investigations in TDMHMR Facilities and Related Programs).

(10) TDMHMR Human Resources Operating Instruction 407-12, §18 (relating to Employee Grievances);

(11) Investigative Medical Peer Review Operating Instruction, 408-2;

(12) Investigative Nursing Peer Review Operating Instruction, 408-1;

(13) Texas Civil Practice and Remedies Code, §81.006; and

(14) 42 USC §10805(a)(4) and §15043(a)(2)(I).

§417.518. Distribution.

(a) This subchapter will be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) members of the Board of the Texas Department of Protective and Regulatory Services;

(3) Central Office executive, management, and program staff;

(4) the head of each facility;

(5) advocacy organizations;

(6) the Texas Board of Medical Examiners;

(7) the State Board of Dental Examiners;

(8) the Board of Nurse Examiners for the State of Texas;

(9) the Board of Vocational Nurse Examiners; and

(10) the Texas State Board of Pharmacy.

(b) The head of each facility is responsible for duplicating and disseminating copies of this subchapter to:

(1) appropriate staff;

(2) contractors and agents; and

(3) any person served, employee, or other individual desiring a copy.

(c) The head of each facility is responsible for prominently displaying copies of this subchapter at nursing stations and on bulletin boards within each facility.

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 November 18, 2002.

TRD-200207515

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 206-5216

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

The Texas Water Development Board (board) proposes the repeal of existing §354.4 and new §354.4 concerning a memorandum of understanding between the board and the Office of Rural Community Affairs.

New §354.4 is proposed to replace existing §354.4 of this title (relating to Memorandum of Understanding between Texas Water Development Board and the Texas Department of Housing and Community Affairs) which is being repealed in order to adopt this memorandum of understanding as part of Chapter 354. New §354.4 establishes a memorandum of understanding between the board and the Office of Rural Community Affairs (ORCA) and details the responsibility of each agency regarding the coordination of funds out of the Economically Distressed Areas Program, administered by the board, and the Colonna Fund, administered by the ORCA, in order to maximize delivery of the funds and minimize administrative delay in the expenditure of these funds. New §354.4 differs from the old version in that the responsibility of the administration of the Colonna Fund has been shifted from the Texas Department of Housing and Community Affairs to the ORCA and therefore the coordination of that fund with the Economically Distressed Areas Program can only be accomplished with ORCA. It has been updated to delete the requirements of agencies to develop and provide information to the Senate Border Affairs Committee regarding the relative costs of providing water and wastewater services and the costs of relocating the residents of the area proposed to be served by the board financial assistance. It has also removed the requirement of developing a joint report to the Legislative Budget Board because it has already been submitted.

Ms. Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the new section is in effect, there will be no fiscal impacts for state or local government as a result of administering the sections.

Ms. Callahan has further determined that for each year of the first five years that the section is in effect, the public benefit anticipated as a result of administering the new section will be improved organization of the board's memorandum of understanding. There is no anticipated effect on small business. There are no anticipated economic costs to individuals.

Comments on the proposed new section will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Assistant General Counsel, Border Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax @ 512/463-5580.

31 TAC §354.4

(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 Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and §6.104, which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provision affected by the repeal is Texas Water Code, Chapter 6, and Texas Water Code, §16.342.

§354.4. Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs

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 November 13, 2002.

TRD-200207424
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 22, 2003
For further information, please call: (512) 463-7981

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31 TAC §354.4

The new section is proposed under the authority of the Texas Water Code, §6.101, which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and §6.104, which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provision affected by the new section is Texas Water Code, Chapter 6, and Texas Water Code, §16.342.

§354.4. Memorandum of Understanding Between Texas Water Development Board and The Office of Rural Community Affairs.

(a) Recitals.

(1) Pursuant to the 1995 Appropriations Act of the Texas Legislature, and continued in the 1997 and 1999 Appropriations Act of the Texas Legislature, the Texas Water Development Board (TWDB) and the Texas Department of Housing and Community Affairs (TDHCA) were required to develop a Memorandum of Understanding (Memorandum) to detail the responsibility of each agency regarding the coordination of funds of the Economically Distressed Areas Program (EDAP), administered by the TWDB, and the Colonna Fund of the Community Development Block Grant Program, administered by the TDHCA, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. The TWDB and the TDHCA executed a Memorandum and performed pursuant to the terms of that Memorandum.

(2) Pursuant to the 2001 General Appropriations Act of the 77th Texas Legislature, the TWDB is required to continue the coordination with the TDHCA that commenced under the Memorandum with

TDHCA. Pursuant to House Bill 7 (H.B. 7) of the 77th Texas Legislature, the Office of Rural Community Affairs (ORCA) was created and the functions and obligations of TDHCA related to the Colonna Fund were transferred to ORCA including the requirement to execute a Memorandum of Understanding to detail the responsibility of each agency regarding the coordination of funds out of the EDAP, administered by the TWDB, and the Colonna Fund of the Community Development Block Grant Program, now administered by ORCA.

(b) Parties. This Memorandum is made and entered into between the ORCA, an agency of the State of Texas, and the TWDB, an agency of the State of Texas.

(c) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under the Colonna Fund are expended in a manner that aids the proliferation of colonies or are otherwise used in a manner inconsistent with the intent of the EDAP operated by the TWDB, so as to maximize delivery of the funds and minimize administrative delay in their expenditure.

(d) Period of performance. This Memorandum shall begin on December 1, 2002, and shall terminate on August 31, 2003. This Memorandum may be extended for additional period of time to ensure compliance with TDHCA Rider No. 4, the responsibility for which was assigned to ORCA by H.B. 7, and TWDB Rider No. 7 to the General Appropriations Act, 77th Legislature for the 2002-2003 Biennium.

(e) Performance. Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonies in order to connect those residents' housing units to EDAP-funded water and sewer systems.

(1) ORCA responsibilities. The ORCA shall be responsible for the following functions:

(A) develop an application process for projects submitted by eligible units of local government;

(B) assist units of general local government in preparing an application to the Colonna Fund;

(C) determine whether projects meet federal requirements;

(D) select projects to receive funding in conjunction with the TWDB;

(E) make Colonna Fund grant awards for selected projects on an as-needed basis;

(F) prepare and execute contracts with units of general local government (Contractor localities);

(G) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(H) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(I) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(J) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations;

(K) consult with the TWDB regarding specific projects on an as-needed basis; and

(L) notify communities on list provided by the TWDB of the availability of funds.

(2) TWDB responsibilities. The TWDB shall be responsible for the following functions:

(A) provide the ORCA with descriptions of and schedules for EDAP-funded projects that need Colonna Fund assistance to provide connections and plumbing improvements at least six (6) weeks before such assistance would be required;

(B) assist eligible units of general local government in preparing an application for assistance through the OCR's Colonna Fund;

(C) select projects to receive funding in conjunction with the ORCA; and

(D) provide assistance with technical project-related concerns brought forward by Contractor localities or the ORCA during the course of the project.

(f) Limitations. Eligible applicants shall be those counties eligible under both OCR's Colonna Fund and TDB's EDAP. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonies identified by the TWDB and in eligible cities that annexed the Colonna where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the Colonna where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code.

(g) Reporting requirements. Each party to this Memorandum shall submit, on or before the fifteenth day of the month following the end of the calendar quarter, to the other party a report of its activities and expenditures during the previous calendar quarter. The first such report shall be due January 15, 2003.

(h) Termination. This Memorandum shall terminate upon ten (10) days written notice by either party to the other party in this contract.

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 November 13, 2002.

TRD-200207425
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 22, 2003
For further information, please call: (512) 463-7981

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 181. GENERAL RULES OF PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §181.28

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §181.28. The amendment is proposed to implement an increase in the application fee for children applying for camp to help cover the rising cost of the program.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be that the program will be able to cover the costs of running the program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Ann Horn, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.28. Camp SIGN.

(a) Description of Services. Camp SIGN is a learning environment for students who are deaf or hard of hearing which is free of communication barriers. The goal is to have all students who are deaf or hard of hearing regardless of their communication mode participate in the program.

(b) Eligibility. Camp is open to boys and girls who are deaf or hard of hearing between the ages of 8 and 17 and residents of Texas.

(c) Counselor in Training (CIT). A program that focuses on developing leadership skills to prepare boys and girls aged 16 and 17 to become future camp counselors and leaders.

(d) Staffing. Camp SIGN staff are chosen on the basis of criteria to accommodate the needs of the campers and to serve as role models for the campers. Staff are recruited from professionals working in the field with individuals who are deaf or hard of hearing. Staff must be able to communicate effectively with children who use American Sign Language, English or other modes of communication. Junior Counselor Staff must be at least 18 years old and Senior counselor staff must be at least 21 years old. Staff are hired by the contracted campsite based on recommendations of the Commission.

(e) Campsites. Any contracted campsite will be obtained through competitive bid or through donation. The campsite must be ADA accessible, and provide adequate facilities and a variety of learning experiences for the campers.

(f) Application Fee. A fee of $35 [~~$25~~] is required to process an application for Camp SIGN. This fee is refundable only upon written request if the child is determined ineligible or if camp space is filled to capacity. [~~, to attend camp, and refund is requested in writing~~]

(g) Sliding Scale Fee. Upon receipt of the application the family economic status is reviewed and a sliding scale may be applied.

(h) Behavior Problems. Children that have behavior problems that constantly disrupt camp activities or threaten other campers or staff will be sent home and all fees forfeited.

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

Filed with the Office of the Secretary of State on November 15, 2002.

TRD-200207486
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 407-3250

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PART 9. TEXAS DEPARTMENT ON AGING

CHAPTER 253. STATE AGING PLAN

40 TAC §253.3

The Texas Department on Aging proposes an amendment to §253.3, concerning Area Agency on Aging Funding Allocation Formula for Older Americans Act Program.

The amendment is necessary as the rule now includes a phase-in provision for fiscal years 2003 and 2004. The previously approved rule did not contain any provision for phasing-in the impact on allocations to Area Agencies on Aging based on the current census data. The phase-in provisions impact allocations for Area Agencies on Aging who received an increase and decrease.

Barbara Zimmerman, Chief Fiscal Officer has determined that for the first five-year period the amendment is in effect there will be fiscal implications for Area Agencies on Aging. Based upon the current census data, some Area Agencies on Aging will receive increased funding based upon their service region's percentage of the state's 60 plus population, percentage of persons 60 and over who are minority and the percentage of persons 60 and over who are minorities. Some Area Agencies on Aging will receive decreased funding based upon their service region's percentage of the state's 60 plus population, percentage of persons 60 and over who are minority and the percentage of persons 60 and over who are minorities. The actual fiscal impact cannot be determined at this time.

Ms. Zimmerman also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the rule will be an updated rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

Comments on the amendment may be submitted to Gary Jessee, Director Office of AAA Support and Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711. All comments must be written and delivered via mail, in person, or facsimile. E-mail and verbal comments cannot be accepted. All

comments must be received within 30 calendar days following the date of publication of the proposed repeal and new rule in the *Texas Register*.

The amendment is proposed under Texas Government Code, §2161.003, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

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

§253.3. Area Agency on Aging Funding Allocation Formula for Older Americans Act Programs.

(a) Goal of the Formula: The goal of this formula is to distribute funding in an equitable manner based upon the most currently available [~~current~~] population projections of the Texas State Data Center; and in so doing clearly meet the assurances contained in the Older Americans Act of 1965, as amended, Section 305(a)(2)(E), as it relates to targeting. To meet the goal of the formula, while avoiding disruptions of service to elderly populations, the Department will phase in the changes in funding allocations that will result to area agencies on aging over a two-year period, and will utilize other available funds to achieve an orderly adjustment of services statewide.

(b) Phase-in Provisions of the Funding Formula.

(1) Phase-in of Allocation Increase. An area agency on aging whose funding will increase will realize that increase in the following phased-in manner:

(A) In Fiscal Year 2003. The area agency on aging will receive 75% of the increase.

(B) In Fiscal Year 2004. The area agency on aging will receive 100% of the increase.

(C) In Fiscal Year 2005 and Every Year Thereafter. The area agency on aging will receive the full increase in allocation.

(2) Phase-in Allocation Decrease. An area agency on aging whose funding will decrease will realize that decrease in the following phased-in manner:

(A) In Fiscal Year 2003. The area agency on aging will experience 50% of the decrease.

(B) In Fiscal Year 2004. The area agency on aging will experience 75% of the decrease.

(C) In Fiscal Year 2005 and Every Year Thereafter. The area agency on aging will experience 100% of the decrease.

(c) [~~(b)~~] Area Agency on Aging State General Revenue Base. Each area agency on aging will be allocated a base amount of $60,000.

(d) [~~(c)~~] Area Agency on Aging Administration Base. In accordance with the Older Americans Act, an administration pool comprised of 10% of the federal allocation of funds to area agencies on aging will be established. Of this amount, each area agency on aging will be allocated no less than $85,000.

(e) [~~(d)~~] Area Agency on Aging Supportive Services Base. Each area agency on aging will be allocated a base amount of $115,000 for Title III Supportive Services.

(f) [~~(e)~~] Area Agency on Aging Nutrition Services Base. Each area agency on aging will be allocated a base amount of $100,000 for Title III Nutrition Services.

(g) [~~(f)~~] Area Agency on Aging Rural Allocation. The rural allocation factor is based upon a three part formula:

(1) area agencies on aging whose population density factor exceeds the statewide average persons aged 60 and over per square mile will receive no rural allocation;

(2) area agencies on aging with a population density factor of fifty percent of the statewide average up to the statewide average of persons aged 60 and over per square mile will receive a rural allocation of $15,000; and

(3) area agencies on aging with a population density factor of less than fifty percent of the statewide average persons aged 60 and over per square mile will receive a rural allocation of $30,000.

(h) [~~(g)~~] Allocation of Remaining Funds. All remaining funds, excluding Title VII Ombudsman Activity Grant, will be allocated in accordance with the following formula of weighted factors:

(1) total area agency on aging region's population aged 60 and over, weighted at 40%;

(2) total area agency on aging region's population aged 60 and over who are minorities, weighted at 10%; and

(3) total area agency on aging region's population aged 60 and over who are living on incomes below the poverty level, weighted at 50%.

(i) [~~(h)~~] Allocation of Title VII Ombudsman Activity Grant (effective federal fiscal year 2004): Each area agency on aging will be allocated a base amount of $3,000. Remaining funds will be allocated based on the following factors:

(1) number of licensed nursing facility beds based upon the most recent Texas Department of Human Services Long-term Care Regulatory Facility Report for the prior state fiscal year, weighted at 50%;

(2) number of licensed assisted living facilities based upon the most recent Texas Department of Human Services Long-term Care Regulatory Facility Report for the prior state fiscal year, weighted at 25%; and

(3) number of certified volunteer Ombudsmen based upon the Texas Department on Aging Active Volunteer Ombudsman Report for the prior state fiscal year, weighted at 25%.

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 November 18, 2002.

TRD-200207508
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 424-6857

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CHAPTER 270. GENERAL SERVICE REQUIREMENTS

The Texas Department on Aging proposes the repeal and replacement of §270.19, concerning Residential Repair Services.

The repeal and new rule are necessary as the allowable threshold for residential repair services has been increased from $1500

to $4500. Additionally, targeting requirements have been updated to reflect the requirements of the Older Americans Act, the section of the rule relating to allowable repairs has been broadened and the administrative requirements have been eliminated as they are included in other rules.

Barbara Zimmerman, Chief Fiscal Officer has determined that for the first five-year period the repeal and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and new section.

Ms. Zimmerman also has determined that for each year of the first five years the repeal and new section are in effect the public benefit anticipated as a result of enforcing the rule will be an updated rule. There will be no effect on small or micro businesses. There will be no effect to individuals required to comply with the section as proposed.

Comments on the repeal and new rule may be submitted to Gary Jessee, Director of the Office of AAA Support and Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711. All comments must be written and delivered via mail, in person, or facsimile. E-mail and verbal comments cannot be accepted. All comments must be received within 30 calendar days following the date of publication of the proposed repeal and new rule in the *Texas Register*.

40 TAC §270.19

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

The repeal is proposed under Texas Government Code, §2161.003, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

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

§270.19. Residential Repair Services.

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

Filed with the Office of the Secretary of State on November 18, 2002.

TRD-200207509
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 424-6857

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40 TAC §270.19

The new rule is proposed under Texas Government Code, §2161.003, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

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

§270.19. Residential Repair Services.

(a) Purpose. The purpose of this rule is to improve the condition of the older person's residence to enhance energy efficiency, structural integrity, health and safety.

(b) Scope. This rule applies to residential repair services funded in whole or part with federal or state funds provided through the Texas Department on Aging.

(c) Targeting. Area agencies on aging shall target individuals in accordance with the Older Americans Act, §305.

(d) Service Authorization. Residential repair services shall be authorized in accordance with §260.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Outcomes. Homes shall receive repairs and/or modifications that are essential for maintaining the health, safety and independence of its older residents. Clients will be provided an opportunity to express their level of satisfaction with residential repair services received.

(f) Unit of Service. One unduplicated dwelling that has received residential repair services. A unit cost shall not exceed $4500 without prior written approval from the Department.

(g) Service Definition. Allowable repairs include:

(1) Structural. Any repairs to the structure itself considered necessary to the health and safety of the client.

(2) Accessibility Modification. Structural adaptations that meet the needs of older persons who have disabling conditions.

(3) Electrical. Replacement of unsafe or defective wiring, replacement of telephone conduits to permit the installation of an emergency response unit and replacement of light switches.

(4) Plumbing. Replacement, repair and/or installation of essential plumbing lines or fixtures.

(5) Weatherization. Repairs and/or modifications or purchase of supplies that protect the home or its resident(s) from the effects of the weather, conserve energy or provide alternative energy sources to heat or cool.

(6) Safety and Security Modification. Measures that prevent accidents, fires or intrusion into a dwelling and the repair, modification, treatment or removal of safety hazards in the home or yard.

(7) Essential Appliance. Appliances necessary to sustain a healthy environment and independent living.

(8) Repair of Rental Units. The area agency on aging may elect to perform residential repair service on rental units occupied by eligible clients who are the primary resident. If work is performed on rental units, the residential repair service providers (AAA) must obtain a signed agreement from the landlord authorizing the repairs and/or modifications.

(h) Prohibited Activities. This includes the following:

(1) construction, repair or maintenance of outbuildings such as garages, carports, animal shelters or greenhouses;

(2) installation, repair or maintenance on non-essential appliances and fixtures; and

(3) beautification of property or activities which are strictly for cosmetic purposes.

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 November 18, 2002.

TRD-200207510
Gary Jessee
Director of the Office of AAA Support and Operations
Texas Department on Aging
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 424-6857

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 807. PROPRIETARY SCHOOLS

The Texas Workforce Commission (Commission) proposes amendments to Subchapter A, General Provisions, §807.2; Subchapter B, Certificates of Approval, §§807.13-807.14; Subchapter C, Financial Requirements, §807.32 and §807.35; Subchapter F, Instructors, §807.81 and §807.83; Subchapter G, Courses of Instruction, §807.92-807.93 and §807.101; Subchapter I, Advertising, §§807.122-807.123 and §807.125; Subchapter J, Admission, §807.141 and §807.146; Subchapter K, Progress Standards, §807.161; Subchapter L, Attendance Standards, §807.175; Subchapter N, Records, §807.211 and §807.213 of Chapter 807. Proprietary Schools.

Background: Effective January 1, 1972, the Texas legislature enacted the Texas Proprietary School Act to provide protection of students and to provide certification and regulation of proprietary schools. The Act was originally codified in Chapter 32 of the Texas Education Code, and was administered by the Texas Education Agency, Division of Proprietary Schools, Drivers Training, and Veterans Education.

In 1995, Senate Bill 1, the 74th Texas Legislature, re-codified Chapter 32 in Chapter 132, Texas Education Code, and required that the Texas Employment Commission assume the regulatory function of the State's system of proprietary schools. During the same legislative session, House Bill 1863 created the Texas Workforce Commission to assume the responsibilities of the Texas Employment Commission. Consequently, as of March 1, 1996, references in the law to the Texas Employment Commission mean the Texas Workforce Commission.

Through the Act and Proprietary School Rules, the Texas Workforce Commission Proprietary Schools Department licenses and regulates most private post-secondary career schools that offer vocational training or continuing education. The Department also investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure and administers the Tuition Protection Fund to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the Proprietary Schools Department seeks to provide consumer protection for Texas students as well as ensure quality training of the labor force to meet the needs of Texas employers.

The purpose of the rule amendments is to address changes in the proprietary school industry from the time when the rules were last revised in August 1998. Since that time, methods to deliver education have evolved in a number of areas, particularly in the area of distance education. The Internet has created opportunities for new delivery techniques as well as provided new methods for advertising and the enrollment of students.

Additionally, some of the regulated proprietary schools have elected to become accredited, have signed participation agreements with U. S. Department of Education, or have made other elections that create oversight by agencies other than the Commission. As a result, there are areas of the rules that are addressed in the requirements of these other agencies. In some cases, the requirements of these other agencies unintentionally modified, made redundant or created unnecessary overlap in the Commission's regulation of proprietary schools.

The proposed amendments to the Proprietary School rules address these issues in order to remove unnecessary requirements and streamline processes in the regulation of Texas Proprietary Schools. These changes are consistent with the Governor's vision of limited and efficient State government.

Specifically, the reason and purpose of each amendment is described as follows:

In §807.2, the amendment clarifies that the rules, which address correspondence training, are intended to recognize all possible forms of distance education by adding references to, and definitions of, the two primary types of distance education: synchronous and asynchronous distance education.

In §807.13, the amendment ensures that the Commission is aware of agreements that may affect the financial stability and/or methods of operation of a school by requiring the disclosure of management agreements to the Commission.

In §807.14, the amendment allows schools more flexibility in delivering seminars to students at new or additional locations by removing restrictive wording.

In §807.32, the amendment reduces the annual reporting requirements for schools by recognizing the federal financial standard used by the U.S. Department of Education as an acceptable alternative to the current financial reporting requirements in the rule.

In §807.35, the amendment makes the requirements for a balance sheet consistent with the recently amended requirements of the Generally Accepted Accounting Principals (GAAP) by eliminating outdated language.

In §807.81, the amendment allows for the recognition of the experience of instructors in seasonal trades by accrediting experience gained on a seasonal basis as the equivalent of one year.

In §807.83, the amendment reduces paperwork and allows flexibility in evaluating the qualifications of instructors by modifying the application process for schools that are approved by an accrediting body recognized by the U.S. Secretary of Education and by allowing a variance to the general requirements, under certain conditions.

In §807.92, the amendment clarifies references to courses of instruction by removing ambiguous wording.

In §807.93, the amendment clarifies references to courses of instruction by removing ambiguous wording.

In §807.101, the amendment requires the Commission be notified if a course of instruction is not to be taught in English.

In §807.122, the amendment prevents exaggerated or misleading advertising by requiring written approval for the use of certain terms.

In §807.123, the amendment expands the current advertising limitations to cover Internet advertising, including the use of graphics.

In §807.125, the amendment ensures that students are aware of all entrance requirements by requiring the publication of the school's entrance requirements in the school catalog.

In §807.141, the amendment ensures that students are protected from changes in the academic requirements by allowing a continuously enrolled student to graduate under the academic requirements in effect when the student enrolled.

In §807.146, the amendment ensures that the students know the cost of their education by requiring a firm price be stated in the enrollment contract.

In §807.161, the amendment recognizes that court reporting students face unique challenges in speed-building classes and allows these students additional time to progress.

In §807.175, the amendment improves the provisions for student leaves of absence by allowing for two leaves of absence with the total number of days being dependent on the length of the program.

In §807.211, the amendment clarifies that the current Master Student Registration List (MSRL), if stored electronically, must be available in hard copy form for monitoring purposes.

In §807.213, the amendment removes the specific requirement to take attendance and allows for a school to use alternative means of calculating a student's last day of attendance for refund purposes.

The Commission's minimum, maximum, and median times for processing applications from the date the Commission received the initial applications to the date of the final decision using the Commission's performance in the past 12 months are respectively as follows: The Original Certificate of Approval processing period is a maximum of 36 days, a minimum of 2 days, and a median of 8 days. The Renewal Certificate of Approval processing period is a maximum of 69 days, a minimum of 2 days, and a median of 9 days. The Change of Owner processing period is a maximum of 53 days, a minimum of 3 days, and median of 13 days. The Representative processing period is a maximum of 186 days, a minimum of 2 days, and a median of 12 days. The Instructor processing period is a maximum of 321 days, a minimum of 2 days, and a median of 70 days. The Director processing period is a maximum of 78 days, a minimum of 2 days and a median of 8 days. The Director of Education processing period is a maximum of 44 days, a minimum of 2 days and a median of 18 days. The data used to compile the processing periods is based on a mail tracking system. Based on limitations of the mail tracking system, the following qualifiers are provided: processing periods of one day were excluded from the calculations; in an indeterminate number of cases, the data reflects total processing times irrespective of whether additional information was needed to complete the applications; and errors may exist due to processing and data base conversion complications. The processing periods provided in §807.6 were based on a decrease in department staffing and an increase in the number of applications needing to be processed.

Randy Townsend, Chief Financial Officer, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Randy Townsend, Director of Finance, and Michael De Long, Proprietary School Coordinator, have determined that there will be no effect on small businesses and anticipated economic costs to persons who are required to comply with the proposed amended rules. The Commission submitted drafts of the amended proprietary school rules to the proprietary schools and held meetings with the Proprietary School Task Force, which included persons representing the interests of proprietary schools, to discuss issues pertaining to the drafts of the amended rules and any costs incurred by the schools with respect to the amended rules. A first draft and subsequent drafts were submitted to the Proprietary School Task Force and written and verbal responses were received on the drafts. The concerns of the proprietary schools were also discussed at the Task Force meetings and conference calls. The requests for input from all licensed proprietary schools were made to assist the Commission in determining what, if any, comments the regulated schools would like considered. During the drafting stage of the proposed rules, the Commission has worked with the proprietary schools to incorporate provisions to reduce the costs to small businesses.

Furthermore, the Commission requested analysis from some proprietary schools to determine the costs of complying with the amended rules and to determine whether an adverse economic effect would result. Factors will cause the estimates to vary, such as the resources available to the school, the wage rate of the person performing the task, the size of the school, and numerous other variables will bear upon the actual costs of compliance for a particular school. Incidental costs such as postage and telephone calls are not included because of their minimal nature.

Based on the responses from the proprietary schools, there are no additional costs to proprietary schools in complying with the proposed amended rules.

For rules that do not add requirements on schools but merely detail how the proprietary schools should comply with the statute, there are no costs other than those required by the statute. Those costs are directly caused by the statute and not by any additional cost to small businesses caused by the rules. For example, the statute requires schools to obtain a bond, and the rules merely state that the bond shall be attached to the application for a certificate of approval.

The Commission anticipates the amended rules will present no costs other than those directly required by the statute.

The majority of currently approved proprietary schools are small businesses; however, many of these proprietary schools are not defined as "small proprietary schools" pursuant to § 132.054 of the Act relating to the Small School Exemption, which states that "The Commission may exempt small proprietary schools from any requirement of this chapter to reduce the cost to small schools of receiving a certificate of approval." To lessen the costs on small businesses the Commission has utilized §807.4 pertaining to waivers which would permit a school to request a waiver from all or part of these rules upon a showing of good cause due to undue economic hardship. The Commission intends to reduce the costs for small schools and small businesses in complying with the rules whenever feasible by applying §132.054 of the Act and §807.4 of the rules.

Michael De Long, Proprietary School Coordinator, has determined that for each year of the first five years the amended rules are in effect, the public benefit anticipated as a result of enforcing the rules shall be to provide rules that are easier to understand and follow regarding proprietary schools and to make the process simpler for current and prospective proprietary school owners to obtain a certificate of approval and operate a proprietary school in compliance with the Proprietary Schools Act.

Comments on the proposed rules may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; telephone number (512) 463-3041; facsimile number (512) 463-1426; e-mail address ruleandpolicy.comments@twc.state.tx.us. Comments should be received by the Commission within thirty (30) days from the date this proposal is published in the *Texas Register*.

The Commission will hold a public hearing on the proposed rules to receive public comments from persons interested in the rules on December 17, 2002 at 1:00 p.m. Notice of this hearing will appear in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §807.2

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.2. Definitions.

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

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Commission.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Commission.

(3) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(4) Act--Texas Education Code, Chapter 132, Proprietary Schools.

(5) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(6) Asynchronous distance education--Distance education training that the Commission determines is not synchronous.

(7) [~~(6)~~] Board--A local workforce development board as created under the Workforce and Economic Competitiveness Act.

(8) [~~(7)~~] Clock hour--Fifty minutes of instruction during a 60-minute period.

(9) [~~(8)~~] Commission--The Texas Workforce Commission.

(10) [~~(9)~~] Coordinating Board--The Texas Higher Education Coordinating Board.

(11) [~~(10)~~] Correspondence course--Distance education, either a seminar or a program, that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(12) [~~(11)~~] Correspondence school--A school that offers only correspondence courses.

(13) [~~(12)~~] Course of instruction--A program or seminar.

(14) [~~(13)~~] Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(15) [~~(14)~~] Good reputation--A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony related to the operation of a school, and the person has been rehabilitated, including completion of parole or probation, from any other convictions that would constitute risk of harm to the school or students as determined by the Commission;

(B) has never been successfully sued for fraud or deceptive trade practices within the last 10 years;

(C) does not own a school currently in violation of legal requirements, has never owned a school with repeated violations, and has never owned a school that closed with violations including, but not limited to, unpaid refunds; and

(D) has not knowingly falsified or withheld information from the Commission.

(16) [~~(15)~~] Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.

(17) [~~(16)~~] Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(18) [~~(17)~~] Program--A sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in the stated occupation.

(19) [~~(18)~~] Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(20) [~~(19)~~] Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(21) [~~(20)~~] School--A "proprietary school," as defined in the Act, that includes each location where courses of instruction shall be offered.

(22) [~~(21)~~] Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(23) [~~(22)~~] Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge

for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(24) [~~(23)~~] Seminar school--A school that offers only seminars.

(25) [~~(24)~~] Small school--A "small school" as defined in the Act.

(26) [~~(25)~~] Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(27) [~~(26)~~] Student--Any individual solicited, enrolled, or trained in Texas by a school.

(28) [~~(27)~~] Subject--A component of a program that includes specific content designed to advance the practical skills and knowledge necessary to prepare a student for employment in the stated occupation. A subject in a school is similar to a course at a community or technical college.

(29) [~~(28)~~] Suspension of enrollments--A Commission sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(30) Synchronous distance education--The Commission may determine distance education to be synchronous under the following conditions:

(A) The training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the clock hours of instruction that the student experiences can be determined; and

(B) There is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter K and attendance standards of Subchapter L of this chapter.

(31) [~~(29)~~] Tour--An inspection of the facilities and equipment pertaining to a course of instruction.

(32) [~~(30)~~] Week--Seven consecutive calendar days.

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 November 12, 2002.

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John Moore
Assistant General Counsel
Texas Workforce Commission
Earliest possible date of adoption: December 29, 2002
For further information, please call: (512) 463-2573

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SUBCHAPTER B. CERTIFICATES OF APPROVAL

40 TAC §807.13, §807.14

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.13. Change in ownership.

(a) The Commission may consider the addition or deletion of any person defined as an owner under the Act as a change in school ownership. The school may notify the Commission of the change in ownership a minimum of 45 days before the change in ownership to request that the Commission in lieu of a full application accept a partial application.

(b) The Commission may require submission of a full application for approval for a change in ownership if:

(1) the Commission has a reasonable basis to believe the change in ownership of the school may significantly affect the school's continued ability to meet the criteria for approval; or

(2) the school fails to file notice of the change of ownership at least 45 days prior to the ownership transfer.

(c) The Commission may require a partial application for approval for a change in ownership if the Commission reasonably believes the change in ownership will not significantly affect the school's continued ability to meet the criteria for approval.

(d) The purchaser of a school shall accept responsibility for all refund liabilities.

(e) Management Agreements must be disclosed to the Commission. Parties to a management agreement shall be of good reputation and character.

§807.14. Locations.

(a) A school shall obtain a certificate of approval for each location where courses of instruction will be offered, unless the school has a certificate of approval and meets one of the exceptions in this section.

(b) The Commission may approve the following as exempt from applying for approval for a new or additional location, if requested at least 30 days in advance:

(1) [~~review~~]seminars, including preparation for licensing examinations, educational institution entrance examinations, and reading improvement;

(2) classes in no more than one location at a time as an itinerant school;

(3) classes at facilities used for additional classrooms for instructional services only, which are within a one-mile radius of the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services; or

(4) short-term programs. Short term programs:

(A) include 200 clock hours or less of instruction; and

(B) are conducted with at least a 90-day interval between cessation of one program and the beginning of the next.

(c) The school shall file an application for a certificate of approval to reflect a new or additional location, including all documents deemed necessary by the Commission, and the appropriate fee. The Commission may issue the certificate of approval after inspection of the new facilities.

(d) If the Commission determines that a move of the school presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

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

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SUBCHAPTER C. FINANCIAL REQUIREMENTS

40 TAC §807.32, §807.35

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.32. Financial Standards.

(a) The balance sheet required in this subchapter shall reflect the following:

(1) positive equity or net worth balance;

(2) unearned tuition as a current liability;

(3) a current ratio of at least one-to-one; and

(4) stockholder's equity or net worth exceeding the amount shown for goodwill, if applicable, under assets in the balance sheet.

(b) Compilations shall be accompanied by the owner's sworn statement.

(c) All financial statements shall identify the name, license number, and licensing state of the accountant associated with the statements and be in accordance with GAAP.

(d) A school that maintains a financial responsibility composite score that meets the general standards established in federal regulations by the U.S. Department of Education for postsecondary institutions participating in student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, shall be considered to have met the financial standards of this subchapter. A school that qualifies under an alternative standard but not the general standard of these federal regulations will not be considered to have met the financial standards of this subchapter unless the school meets the other requirements stated in this subchapter.

§807.35. Financial Requirements for Renewal.

(a) A school shall submit annual financial statements as set forth in this section that shall be:

(1) audited by an accountant and consistent with GAAP;

(2) reviewed by an accountant and consistent with GAAP (except for the first renewal, which must be audited or compiled); or

(3) compiled by an accountant, containing an unearned tuition affidavit and at least one note disclosing the current and long-term liabilities. This note shall be similar to that required by GAAP for reviewed and audited statements. Compiled statements are acceptable under the following conditions:

(A) the gross annual revenue from student tuition and fees is $50,000 or less;

(B) the courses of instruction are less than one month in length; or

(C) the school maintains alternative bonding.

(b) Each school shall furnish financial statements in association with an accountant annually and not later than 180 days from the close of the school's fiscal year. These statements shall include the following:

(1) balance sheet[~~(calculation of unearned student tuition shall be based upon at least a quarterly pro rata basis or refund policy basis for the program, whichever would most accurately reflect recognition of income)~~];

(2) statement of results of operation, which includes a statement of income and retained earnings;

(3) statement of cash flows; and

(4) the gross amount minus refunds of annual student tuition and fees for each school, separated from other revenues unrelated to training.

(c) An alternative bonded school may submit all of the following in lieu of the financial statements required in this section:

(1) an unearned tuition affidavit;

(2) a copy of the annual income tax form filed specifically for the business; and

(3) an owner's sworn statement certifying that the unearned tuition affidavit and the copy of the annual income tax form are true and correct.

(d) A school that is a subsidiary of a corporation may submit, in lieu of the statements required in this section, the annual audited financial statements of the parent corporation provided that:

(1) said statements are accompanied by an audited list of any student tuition refunds payable by the subsidiary school at the close of its fiscal year. The statements shall also be accompanied by an owner's sworn statement reflecting the gross amount minus refunds of

student tuition and fees earned during the fiscal year on all programs approved under the Act; and

(2) the parent corporation ensures that each student enrolled in the subsidiary school receives either the training agreed upon or a refund as provided in the Act, and submits either a certified resolution of its board of directors to this effect or any other evidence as deemed appropriate by the Commission to establish financial responsibility by the parent corporation.

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

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SUBCHAPTER F. INSTRUCTORS

40 TAC §807.81, §807.83

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.81. Instructor Qualifications.

(a) The instructor shall be of good reputation and shall not be a current student in the same or similar program, as determined by the Commission, in which the instructor teaches.

(b) Instructors shall possess and affirm on forms provided by the Commission that the instructor has one of the following qualifications that applies to the subject area to be taught. In such cases where the practical experience is gained on a seasonal basis as an industry standard, the season of at least three months of experience shall be considered as one year of experience.

(1) The instructor has a master's degree or higher that:

(A) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject to be taught;

(B) includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours, or four quarter credit hours in the subject area to be taught, if the subject to be taught is in a non-technical field; or

(D) includes one year of related practical experience in the subject to be taught within the ten years immediately preceding employment by the school, if the subject to be taught is in a non-technical field.

(2) The instructor has a bachelor's degree that:

(A) includes nine semester hours or 12 quarter hours related to the subject area to be taught;

(B) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the subject area to be taught and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours or four quarter credit hours in the subject area and one year of related practical experience within the ten years immediately preceding employment by the school, if the subject to be taught is in a non-technical field; or

(D) includes two years of related practical experience within the ten years immediately preceding employment by the school.

(3) The instructor has an associate's degree that:

(A) includes satisfactory completion of nine semester credit hours or 12 quarter hours in the subject area to be taught and two years of related practical experience within the ten years immediately preceding employment by the school; or

(B) includes three years of related practical experience within the ten years immediately preceding employment by the school.

(4) The instructor has a secondary education if it includes a certificate of completion from a recognized postsecondary school for at least a 900 clock-hour program in a relevant subject area and four years of related practical experience within the ten years immediately preceding employment by the school; or

(5) The instructor has proof of satisfactory completion of secondary education if accompanied by five years of related practical experience within the ten years immediately preceding employment by the school.

(c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.

(1) The Commission requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:

(A) an associate's degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;

(B) an associate's degree in court reporting from any state-recognized school;

(C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or

(D) a certificate of completion of a court reporting program from a state-certified school.

(2) The Commission requires that a court procedures and technology instructor shall have:

(A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and

(B) one year of court reporting experience.

(3) The Commission requires that a modeling instructor shall have, at a minimum:

(A) a secondary education and certificate of completion from a modeling program of at least 45 clock hours from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or

(B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.

(4) The Commission requires that a truck driving instructor shall have, at a minimum:

(A) a secondary education;

(B) certified proof of successful completion of 40 clock hours in safety education and driver training as required by this chapter; and

(C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.

(5) The Commission requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as having completed the required awareness course.

(d) The director shall ensure that an instructor applicant demonstrates sufficient language to teach the subject for which the instructor is applying to teach.

(e) The Commission shall grandfather schools from meeting the instructor requirements contained in this section for a particular instructor provided that the school has submitted the application for approval of the instructor to the Commission prior to the effective date of this section and the application results in approval by the Commission.

(f) For those instructors who return to the school prior to one full year of absence, and who will be teaching the same subjects as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new subjects or the absence was more than one year, the school shall submit a new application to the Commission.

§807.83. Instructor Application.

(a) A school that has been licensed for at least one year and is accredited by an agency recognized by the U. S. Secretary of Education is not required to submit instructor applications to the Commission for approval. Documentation that the instructor meets the requirements of this chapter must be kept on file at the school and available for review immediately upon request.

(b) [~~(a)~~] The school shall file an application for approval of an instructor on forms provided by the Commission in accordance with the following criteria and ensure that the instructor is of good reputation.

(1) The application shall be postmarked within five calendar days of employment as an instructor subject to the conditions outlined in this subchapter. A school may employ an instructor pending approval by the Commission.

(2) Depending upon the qualifications indicated on the application, the application shall include one or more of the following:

(A) a legible copy of the postsecondary certificate or degree, or a transcript indicating appropriate coursework completed, as applicable;

(B) proof of a current occupational license; and

(C) proof of secondary education.

(c) [~~(b)~~] A school with degree programs shall ensure that instructors are of good reputation and meet all the qualifications required by the Coordinating Board.

(d) The Commission may approve a variance from the specific qualifications contained in Section 807.81 of this subchapter with sufficient justification and an assurance that the program quality will not be lessened.

(e) [~~(c)~~] The Commission may consider current approvals of instructors by other Texas state agencies responsible for approval and regulation of the program, or any professional certifications held by the instructor when submitted with the Commission's instructor application. The Commission will accept notification, in lieu of a new instructor application, for any instructor that has a current approval by the Commission to teach the same subjects at other schools that have the same owners.

(f) The Commission may require the school director of an accredited school to file applications for instructors if there have been two substantiated complaints regarding instructors in the previous year, or if the school is unable to produce, when requested, documentation that all instructors meet the requirements of this subchapter.

(g) [~~(d)~~] The Commission may require a school director to submit and receive approvals for instructor applications in advance of employing the instructors for a period of one year if the school has had three instructor applications finally disapproved within the previous two years.

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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John Moore
Assistant General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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SUBCHAPTER G. COURSES OF INSTRUCTION

40 TAC §§807.92, 807.93, 807.101

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.92. General Information for Courses of Instruction.

(a) A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.

(b) No subject or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately impart the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(c) A school may not solicit students, otherwise advertise, or conduct classes for a course of instruction[~~program~~] prior to the Commission's approval of thecourse of instruction[~~program~~]. Any such activity by the school, prior to the Commission's approval of the course of instruction[~~program~~], shall constitute a misrepresentation by the school and shall entitle each student in the course of instruction[~~program~~] to a full refund of all tuition and fees paid by the student and release from all obligations.

(d) The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program in excess of 200 clock hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.

(e) If the applicant requests approval to measure programs in credit hours, the following conversion table shall be used.

(1) One academic quarter credit hour equals a minimum of:

(A) 10 clock hours of classroom lecture;

(B) 20 clock hours of laboratory experience; or

(C) 30 clock hours of externship.

(2) One academic semester credit hour is equal to a minimum of:

(A) 15 clock hours of classroom lecture;

(B) 30 clock hours of laboratory experience; or

(C) 45 clock hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each subject, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a subject.

§807.93. Applications for Additional Courses of Instruction.

(a) A school applying for approval of an additional course of instruction[~~program~~], after receiving an original certificate of approval, shall submit a complete application that includes:

(1) the appropriate fee;

(2) a completed application for [~~program~~]approval on forms provided by the Commission; and

(3) any other revisions or evidence as requested by the Commission.

(b) The Commission may require an abbreviated program application if:

(1) the school has the exact program approved at another location;

(2) the program objective changes;

(3) the program length changes 25% or more; or

(4) the school's completion and employment rates are exemplary, as determined by the Commission.

(c) The Commission may deny an application for approval of an additional course of instruction[~~program~~] if the school is not in full compliance with the Act or this chapter.

§807.101. School Responsibilities Regarding Programs.

(a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced or not conducted in English.

(b) To maintain program approval, the school shall demonstrate the following:

(1) a reasonable student completion rate for each program; and

(2) a minimum employment rate for program graduates in jobs related to the stated occupation.

(c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.

(d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.

(e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.

(f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.

(g) A school shall have and use lesson plans for all subjects.

(h) A school may not use subjects from one or more approved programs to create a new program and award a certificate of completion without prior approval.

(i) The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Commission to conform to conditions in an individual school. The following student-instructor ratios may be acceptable for single subject classes:

(1) business lecture or laboratory--30 to one;

(2) technical, vocational, or allied health lecture--30 to one;

(3) technical lab (examples: computer programming, data processing, electronics)--20 to one;

(4) vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)--20 to one; and

(5) intensive language instruction (beginning)--15 to one; (intermediate to advanced)--20 to one.

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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TRD-200207371

John Moore
Assistant General Counsel
Texas Workforce Commission
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For further information, please call: (512) 463-2573

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SUBCHAPTER I. ADVERTISING

40 TAC §§807.122, 807.123, 807.125

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.122. Advertisement Method.

(a) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(b) A school shall not be advertised under any "help wanted," "employment," or similar classification.

(c) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(d) A [~~degree granting~~]school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.

(e) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

§807.123. Advertisement Content.

(a) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(b) Advertisements shall not include:

(1) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(2) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government; or

(3) representation of the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school.

(c) A school holding a franchise to offer specialized programs or subjects not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special subjects or programs offered under a franchise shall be limited to the subject or programs offered.

(d) A school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.

(e) A school shall not use a photograph, cut, engraving, [~~or~~]illustration, or graphic in advertising in such a manner as to: [~~convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school.~~]

(1) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or

(2) circumvent any of the requirements of this chapter regarding written or oral statements.

(f) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

§807.125. Catalog.

(a) The catalog shall include the following:

(1) table of contents or index;

(2) name and complete street address of the school;

(3) volume number, date of publication, and effective dates;

(4) history of any accreditations or approvals, including statement of approval and regulation by the Commission;

(5) description of space, facilities, and equipment;

(6) list of all trustees, directors, officers of the corporation, and owners;

(7) list of management staff and faculty, including education relating to the areas of instruction;

(8) tuition, fees, other charges, and applicable scholarship terms;

(9) school calendar;

(10) school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

(11) policies regarding enrollment, including entrance requirements, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;

(12) veterans administration refund policy, if applicable;

(13) description of courses of instruction, including the number of clock hours of a seminar, seminar topic, lecture, lab, and externship, as well as credit hours in each subject, if applicable;

(14) description of each subject;

(15) description of the grading policy, including requirements for graduation;

(16) description of placement assistance, if available;

(17) statement of polices regarding grievances; and

(18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any subjects defined as self-paced shall be noted as such in the catalog.

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

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Texas Workforce Commission
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SUBCHAPTER J. ADMISSION

40 TAC §807.141, §807.146

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.141. General Information for Admission.

(a) The Commission may approve specific admission requirements for seminars and small schools.

(b) Small schools with programs of 40 clock hours or less, individual subject offerings, and seminars are not required to grant credit for previous education and training.

(c) The school shall make appropriate adjustments to the program length and price based upon credit granted for previous education and training, where warranted.

(d) For a school having specific term-beginning dates, a school may not start students after the third day of classes during any given term, except in those cases where appropriate credit for previous education and training has been given according to the Act and this chapter.

(e) A continuously enrolled student has the right to graduate under the academic requirements stated in the catalog in effect at the time of the student's enrollment.

§807.146. Tuition and Fees.

(a) A school shall disclose to potential students all tuition, fees, and other charges, and state such information in the school's application for a certificate of approval. The school may not use an estimated tuition amount, nor may the school increase the student's tuition if the student remains continuously enrolled and completes the training as approved at the time of admission. If the school charges to repeat subjects, the amount of the charges must be disclosed to the student.

(b) A school shall make available for review by the Commission upon request:

(1) a description of the methods of payment that are available to enrolling students;

(2) the names and addresses of lending institutions used by the school for student tuition loans; and

(3) the true annual percentage rate and any other fees or charges associated with student tuition loans.

(c) A school shall refund or forfeit any tuition, fees, or other charges not previously disclosed to the Commission.

(d) A school may offer scholarships providing the terms of scholarships are disclosed to the Commission.

(e) The school shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. A school shall clearly identify the payor, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(f) A school shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Commission. Each separately charged item shall be clearly itemized on a student-signed receipt.

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

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SUBCHAPTER K. PROGRESS STANDARDS

40 TAC §807.161

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.161. General Requirements for Progress Standards.

(a) The Commission may approve specific progress standards for self-paced, competency-based programs.

(b) Seminars, because of their nature and duration, are not required to have progress standards.

(c) The progress evaluation records shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

(d) The school shall submit its policies pertaining to incomplete grades to the Commission for approval and publish those policies in the school's catalog. The policies shall address the possibility of the subjects being discontinued when the student returns and clarify options available to that student pursuant to the Act.

(e) Approved court reporting program students may receive one grade of "IP" (in progress) in any speedbuilding subject if they have not achieved the required speed at the end of the grading period.

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

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SUBCHAPTER L. ATTENDANCE STANDARDS

40 TAC §807.175

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.175. Leaves of Absence.

(a) Seminars and small schools with programs of 40 clock hours or less shall not grant leaves of absence.

(b) A school director may grant a leave of absence after determining that good cause is shown. [~~A leave of absence may not exceed the lesser of 30 school days or 60 calendar days.~~]

(c) In a 12-month calendar period, a student may have no more than two leaves of absence.[~~A school shall grant only one leave of absence per 12-month calendar period.~~] For a program of 200 clock hours or less, a student may be on leave of absence for a total of 30 calendar days. For programs of more than 200 clock hours, a student may be on leave of absence for a total of 60 calendar days.

(d) School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.

(e) In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedules their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

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

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For further information, please call: (512) 463-2573

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SUBCHAPTER N. RECORDS

40 TAC §807.211, §807.213

The amendments are proposed under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The proposed amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

§807.211. General Information for Records.

(a) A school shall permanently maintain a master student registration list (MSRL). If the school maintains the MSRL in electronic form, the school must be able to produce a printed copy immediately upon request. The MSRL must contain at least the following information[~~indicating the following~~]:

(1) date of applicable entry;

(2) name of student;

(3) address of student including city, state, and zip code;

(4) telephone number;

(5) social security number;

(6) date of birth; and

(7) name of program.

(b) A school shall maintain current records and necessary data for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:

(1) maintained on-site; and

(2) made available to the Commission for inspection.

(c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Commission review.

(d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.

(e) The Commission may conduct unannounced compliance inspections.

(f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audio tapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

§807.213. Attendance Record Keeping.

(a) Schools are not required to take attendance. However, if a school does not take attendance, it must develop an alternative method to accurately determine a student's last date of attendance for refund purposes and to monitor absences. This alternative method must be approved in writing by the Commission.

(b) [~~(a)~~] A school offering seminars or other programs where students do not change instructors during the school day, are not required to maintain a separate master record of attendance, if the school voluntarily takes attendance.

(c) [~~(b)~~] A school shall maintain a master record of attendance on each student that clearly indicates the number of scheduled hours each day and the hours of absence, if the school voluntarily takes attendance.

(d) [~~(c)~~] If the school voluntarily takes attendance, each[~~Each~~] instructor shall maintain a record of attendance, which shall indicate a positive record of each student's attendance. Entries in the record of attendance shall be made in ink or other permanent medium, including scantron or other permanent computer records, and shall not be changed in a manner that precludes reading the original entry.

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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John Moore
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For further information, please call: (512) 463-2573

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WITHDRAWN RULES

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

TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 417. AGENCY AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

25 TAC §417.13, §417.48

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section's, submitted by the Texas Department of Mental Health and Mental Retardation have been automatically withdrawn. The new section's as proposed appeared in the May 10, 2002 issue of the *Texas Register* (27 TexReg 3907).

Filed with the Office of the Secretary of State on November 15, 2002.

TRD-200207473

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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §§355.201, 355.301-355.305, 355.310, 355.504, and 355.6901-355.6906 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8843).

Justification for the repeals is the deletion of obsolete reimbursement methodology rules for each Medicaid program operated by the Texas Department of Human Services (DHS) for which cost reports are required. Cost determination process rules for pre-1997 Cost Reports are no longer in effect, and rules for 1997 and subsequent Cost Reports are in place. Having rules for cost reports for two different time periods was confusing to providers. HHSC also wanted to repeal an obsolete general rule regarding pre-1997 Cost Reports in §355.201 to eliminate confusion and to rid the rule base of outdated rules.

HHSC received no comments regarding adoption of the repeals.

SUBCHAPTER B. REIMBURSEMENT METHODOLOGY

1 TAC §355.201

The repeal is adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The repeal implements the Government Code, §531.033 and §531.021(b).

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

Filed with the Office of the Secretary of State on November 15, 2002.

TRD-200207481

Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: January 1, 2003
Proposal publication date: September 20, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §§355.301 - 355.305, 355.310

The repeals are adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The repeals implement the Government Code, §531.033 and §531.021(b).

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

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.504

The repeal is adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The repeal implements the Government Code, §531.033 and §531.021(b).

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

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

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SUBCHAPTER G. TELEMEDICINE SERVICES

1 TAC §§355.6901 - 355.6906

The repeals are adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The repeals implement the Government Code, §531.033 and §531.021(b).

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

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3734

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061

The Health and Human Services Commission (HHSC) adopts an amendment to §355.8061, concerning payment for hospital services, in its Medicaid Reimbursement Rates chapter, without changes to the proposed text as published in the August 30, 2002, issue of the *Texas Register* (27 TexReg 8073). The text of §355.8061 will not be republished.

The amendment to §355.8061 is justified as it addresses the provision of supplemental payments for outpatient hospital services provided by certain hospitals in certain large urban counties. These supplemental payments will help maintain access to medically necessary services in these counties. The amendment to §355.8061 will function by describing the methodology that will be used to determine the amount of supplemental payments to qualifying hospitals.

During the public comment period, which included a public hearing on September 19, 2002, comments supporting the proposal were received from the Texas Hospital Association and the Texas Association of Public & Nonprofit Hospitals.

The rule amendment is adopted under the Texas Government Code, §531.033, which provides the commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The adopted rule amendment affects the Human Resources Code, Chapter 32 and the Texas Government Code, Chapter 531.

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

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Steve Aragon
General Counsel
Texas Health and Human Services Commission
Effective date: December 4, 2002
Proposal publication date: August 30, 2002
For further information, please call: (512) 424-6756

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS
SUBCHAPTER M. ELECTRONIC OPERATIONS

7 TAC §91.4001

The Texas Credit Union Commission adopts the amendments to existing §91.4001, concerning authority to conduct electronic operations without changes to the text published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6791) and will not be republished.

One of the amendments clarifies that a credit union is not considered to be doing business in the State of Texas solely because it physically maintains technology in this State or because the

credit union's product or services are access through electronic means by citizens of this State. The other amendment seeks to reduce risk of member confusion by mandating that credit unions sharing electronic space with third parties must take reasonable steps to distinguish between products and services offered by the credit union and those offered by third parties.

The amendments are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review §91.4001 was published in the *Texas Register* on April 12, 2002 (27 TexReg 3220) for the purpose of accepting public comments.

No comments were received on the proposal.

The amendments are adopted under the Texas Finance Code, §15.402. The Commission interprets §15.402 to authorize the Commission to adopt reasonable rules for administering the Texas Credit Union Act.

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 November 18, 2002.

TRD-200207489
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: December 8, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 837-9236

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7 TAC §91.4002

The Texas Credit Union Commission adopts the amendments to existing §91.4002, concerning notice requirements for a transactional website without changes to the text published in the August 2, 2002, issue of the *Texas Register* (27 TexReg 6792) and will not be republished.

The amendment requires a credit union to review the adequacy of its website security measures at least once every two years. Credit unions that outsource this technology platform can rely on the testing performed for the service provider if the testing meets the requirements of the amendment.

The amendments are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review §91.4002 was published in the *Texas Register* on April 12, 2002 (27 TexReg 3220) for the purpose of accepting public comments.

No comments were received on the proposal.

The amendment is adopted under the Texas Finance Code, §15.402. The Commission interprets §15.402 to authorize the Commission to adopt reasonable rules for administering the Texas Credit Union Act.

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 November 18, 2002.

TRD-200207490
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: December 8, 2002
Proposal publication date: August 2, 2002
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 49. 2002 LOW INCOME HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.18

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§49.1 - 49.18, without changes, as published in the September 27, 2002, issue of the *Texas Register* (27 TexReg 9026) concerning the Low Income Tax Credit Rules.

The sections are repealed in order to enact new sections conforming to the requirements of regulations enacted under the §42 of Internal Revenue Code of 1986, as amended (26 U.S.C. §42), which provides for credits against federal income taxes for owners of qualified low income rental housing. The repeal of these rules is contingent upon the Governor's approval, rejection or modification and approval pursuant to §2306.6724(c) of the Texas Government Code.

No comments have been received regarding the adoption of the repeals.

The repeals are adopted pursuant to the authority of Chapters 2306, 2001 and 2002, Texas Government Code, V.T.C.A, and §42 of Internal Revenue Code of 1986, as amended (26 U.S.C. §42), which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing tax credit allocations in the State of Texas.

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

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

Filed with the Office of the Secretary of State on November 18, 2002.

TRD-200207506

Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 8, 2002
Proposal publication date: September 27, 2002
For further information, please call: (512) 475-3726

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

10 TAC §§49.1 - 49.24

The Texas Department of Housing and Community Affairs adopts new §§49.1 - 49.24, concerning the 2003 Low Income Housing Tax Credit Qualified Allocation Plan and Rules, with changes, to the proposed text as published in the September 27, 2002, issue of the *Texas Register* (27 TexReg 9027). The adoption of these rules is contingent upon the Governor's approval, rejection or modification and approval pursuant to §2306.6724(c) of the Texas Government Code.

These rules are being adopted to provide procedures for the allocation by the Department of certain low income housing tax credits available under federal income tax laws to owners of qualified low income rental housing developments.

On September 27, 2002, the proposed 2003 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules (QAP) was published in the *Texas Register*. The comment period commenced on September 27, 2002 and ended on October 25, 2002. In addition to publishing the document in the *Texas Register*, a copy of the QAP was published on the Department's web site and made available to the public upon request. The Department held ten public hearings across the state to gather feedback on the draft QAP. In addition to the comments received at the public hearings, the Department received substantial written comments.

The scope of public comment concerning the QAP pertains to the following sections:

Summary of Substantive Comments on the QAP

§49.1(b)--Program Statement

Comment: Comment was received that the QAP should more clearly emphasize in its program statement that TDHCA intends to have its housing be accessible.

Department Response: Staff concurs with this recommendation.

(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.

Board Response: Department's response accepted.

§49.2--Coordination with Rural Agencies

Comment: One comment requested a revision showing that the Office of Rural Community Affairs (ORCA) has the approval authority over the criteria applied to the applications eligible for the rural set-aside because all aspects of the rural set-aside should be put under the direction of ORCA.

Department Response: The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. No change is recommended.

Board Response: Department's response accepted.

§49.3--Proposed Definition for Adaptive Reuse

Comment: Comment was received opposing the removal of the definition for Adaptive Reuse from the 2002 QAP and also suggesting that the 2002 definition that referred to hotels or dormitories be expanded to include the conversion of any building not previously used for permanent residential purposes. It was also suggested that in the definition the QAP specify that Adaptive Reuse developments qualify as rehabilitation.

Department Response: The QAP was clarified so that no definitions existed that were not used elsewhere in the document. At this time, the term Adaptive Reuse is not used elsewhere in the QAP, nor is it proposed in any revision. No changes are proposed.

Board Response: Department's response accepted.

§49.3--Proposed Definition for Developer

Comment: Comment recommended that the QAP add a definition for "Developer" because the entity filling that role is an important part of the analysis of the Application. Throughout the QAP, the Department refers to "any entity receiving a portion of the developer fee". This could be clarified with a broad definition of Developer.

Department Response: Staff concurs that the definition is needed and will simplify terminology throughout the QAP. Note that in addition to the language change below the word "Developer" has been integrated throughout the QAP.

(28) 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.

Board Response: Department's response accepted.

§49.3(1)--Definition of Administrative Deficiency

Comment: Extensive comment supports the 2003 QAP definition as drafted--the short cure period time enhances program efficiency. Two comments suggested that the 3 day non-penalty period should be extended to 5 days and that 10 days should be given before termination of the application because the current language may pose a hardship in the event of illness or vacation, and may cause a problem if the issue needing resolution is complex. One comment suggested that a qualified third party should be given the responsibility to review all applications to determine

whether any administrative deficiency exists, as well as whether they have been remedied.

Department Response: The current method for processing deficiencies has been a success for the past two years--the timing gives applicants an opportunity to "cure" administrative oversights but still allows the staff to efficiently proceed with evaluating applications. Staff has the proper level of expertise, and training, to objectively review applications for administrative deficiencies and determine if those deficiencies have been adequately satisfied. No changes are proposed.

Board Response: Department's response accepted.

§49.3(2), (14), (6) and (69)--Definitions of Affiliate, Beneficial Owner, Applicant, and Related Party

Comment: The Department uses various terms to refer to the individuals or entities that are involved in the ownership structure or control of a particular organization. The defined terms "Affiliate", "Beneficial Owner", and "Related Party" are used in different contexts throughout the QAP. In addition, the Department often uses the term "principal", which is not defined at all. The use of a variety of terms can be confusing, especially in transactions like these that have complex organizational structures. The "Related Party" definition is particularly cumbersome and unnecessary. Using a variety of terms may mean that the Department does not receive consistent information across the various sections of the Application. Ultimately, in any case where the terms "Affiliate", "Beneficial Owner", "Related Party", or "principal" are used, the Department is trying to get to one goal: the identification of the parties involved in the ownership or control of a particular enterprise. A simple definition of "Affiliate", properly drafted, should work in virtually every circumstance. This could eliminate confusion and the possibility that certain information could slip through the cracks because of the use of multiple defined terms.

Department Response: The Department concurs with the evaluation made regarding these terms. However, because of the substantive revisions required to promulgate these changes, staff suggests establishing a working group to thoroughly research these terms and make recommendations for simplification and improvement for the 2004 QAP. The term Related Party is currently defined in Section 2306 of Texas Government Code and must be retained in the QAP. However, the Uniform Application had already defined the term Principal and staff recommends implementing that definition into the QAP. No other changes are proposed.

(60) Principal--the term Principal is defined as Persons that will have an ownership interest in, or that will exercise Control over, a partnership, corporation, limited liability company, trust, or any other public or private entity and their Affiliates that will have an ownership interest in, or that will exercise Control over, the Applicant. In the case of:

(A) partnerships, Principals include all General Partners regardless of their percentage interest;

(B) corporations, Principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors or any equivalent governing body as well as all directors and each stock holder having a ten percent or more interest in the corporation; and

(C) limited liability companies, Principals include all members, regardless of their percentage interest."

Board Response: Department's response accepted.

§49.3(5)(A)--Definition of Applicable Percentage

Comment: The clause relating to the "current applicable percentage" should clarify by properly identifying the month.

Department Response: Staff concurs that clarification is needed.

(5) Applicable Percentage--The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b). For purposes of the Application, the Applicable Percentage will be projected at 10 basis points above the greater of:

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

(B) 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."

Board Response: Department's response accepted.

§49.3(6)--Definition of Applicant

Comment: Comment suggested including the term 'Beneficial Owner' in the definition for Applicant to help tighten up the $1.6 million per applicant credit cap.

Department Response: As stated above, the Department concurs that the definitions for Applicant and Beneficial Owner warrant revision. However, because of the substantive revisions required to promulgate these changes, staff suggests establishing a working group to thoroughly research these terms and make recommendations for simplification and improvement for the 2004 QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.3(12)(B)(i) and (ii)--Definition of At-Risk Development

Comment: There was wide support for having added Section 42 properties to the definition. It was also pointed out that "within two calendar years" needs to be clearer so that applicants and staff can calculate if the two-year requirement is met. Currently it is unclear from what date the two years is measured.

Department Response: Staff concurs that clarification is needed regarding the two year term.

(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)." Board Response: Department's response accepted.

§49.3(13)--Definition of Bedroom

Comment: The definition for bedroom should have the following language added: "In an adaptive reuse development that proposes a loft style open floor plan, the number of bedrooms shall be determined by the square footage listed as the minimum unit size listed in §49.9(f)(4)(A) provided that the unit has windows that open and provides for storage comparable to the described closet somewhere in the Unit."

Department Response: The Department concurs that the definition for Bedroom may need to be "modernized." However, staff feels that more extensive research is required to identify the implications of changes and consider the approach that other states are taking on this issue with the intention of making a recommendation for the 2004 QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.3(27)--Definition of Determination Notice

Comment: Comment proposed clarification in the definition of Determination Notice.

Department Response: Staff concurs with clarification.

(27) Determination Notice--A notice issued by the Department to the Owner of a Tax Exempt Bond Development which states that the Development may be eligible to claim low income housing tax credits without receiving an allocation of 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 qualified low income housing Development throughout the Credit Period.

Board Response: Department's response accepted.

§49.3(29)--Definition of Development

Comment: Comment was received that if the mixed income points are added back into the QAP, then the definition for development should be revised to allow scattered site developments to have a proportionate amount of market rate units. Department Response: Section 42(g)(7) of the Internal Revenue Code states that for scattered site developments to be treated as one development all of the units in the building must be rent restricted. No changes are proposed.

Board Response: Department's response accepted.

§49.3(31)--Definition of Development Owner

Comment: Comment was received for §49.5(b) relating to the clauses used in defining ineligible parties. The use of multiple terms (principals, Affiliates) to try to capture all parties involved in the ownership or control of an enterprise can be confusing. Language was proposed, as seen at the memorandum reference for §49.5(b), that simplified the utilization of terms. Department Response: Staff concurred with the proposed language for §49.5(b), but wanted to ensure that the General Partner was still included. Therefore, to be comprehensive, staff recommends adding the term General Partner into the definition for Development Owner.

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.

Board Response: Department's response accepted.

§49.3(32)--Definition of Development Team

Comment: Comment suggested that to help tighten up the $1.6 million per applicant credit cap the word "material" should be deleted in the definition and the definition expanded to include persons who act as guarantors for a fee. Comment suggested that the phrase relating to the consultant should be replaced with "Development Consultant" for consistency with existing definitions.

Department Response: Staff concurs with both recommended changes.

(31) Development Team--All Persons or Affiliates thereof which play(s) a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and anyone who provides, or is anticipated to provide, a guarantee to secure equity or financing for the transaction for a fee.

Board Response: Department's response accepted.

§49.3(33)--Definition of Economically Distressed Area

Comment: Clarification was requested as to which agency board is being referenced in the definition.

Department Response: Clarification is provided, as the definition refers to the Texas Water Development Board.

"(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 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."

Board Response: Department's response accepted.

§49.3(39)--Definition of General Partner

Comment: Comment suggested that the definition be revised. At law, a general partner has general liability for the partnership throughout a partnership's life, not just during the construction and lease-up phases. This provides a more accurate definition and identifies the entity or entities serving as general partner at any given time in the Development Owner's life.

Department Response: Staff concurs with the proposed revision.

(38) General Partner--That partner, or collective of partners, which is identified as the general partner of the partnership that is the Development Owner and has general liability for the partnership. In addition, unless the context shall clearly indicate to the contrary, if the entity 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. Board Response: Department's response accepted.

§49.3(40)--Definition of General Pool

Comment: Clarification was requested for the last clause in the definition referring to how the general pool credits will be used for the nonprofit set-aside.

Department Response: The Board will determine at the time that General Pool credits are available, how they will be applied to the waiting list they have approved which accounts for set-asides. Therefore, the clause has been truncated to avoid confusion regarding set-asides.

(39) General Pool--The pool of credits that have been returned or recovered from prior years' allocations or the current year's

Commitment Notices after the Board has made its initial commitment of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list.

Board Response: Department's response accepted.

§49.3(44)--Definition of Housing Credit Agency

Comment: One comment proposed amending the definition to show that ORCA maintains responsibility over the rural set-aside and that TDHCAs authority over that portion of the credit program is secondary to ORCAs.

Department Response: While the IRS permits more than one allocating agency, TDHCA does not have the authority to designate those entities. The Governor of the State of Texas would need to designate ORCA as an allocating agency. Therefore, neither TDHCA nor the QAP can "give" away its authority to allocate all of the credits for the state of Texas. The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. No changes are proposed.

Board Response: Department's response accepted.

§49.3(46)--Definition of Housing Credit Allocation

Comment: One comment proposed amending the definition to show that ORCA maintains responsibility for determining the allocation amount necessary for financial feasibility of developments in the rural set-aside.

Department Response: While the IRS permits more than one allocating agency, TDHCA does not have the authority to designate those entities. The Governor of the State of Texas would need to designate ORCA as an allocating agency. Therefore, neither TDHCA nor the QAP can "give" away its authority to allocate all of the credits for the state of Texas. The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process.

Board Response: Department's response accepted.

§49.3(49)--Definition of Ineligible Building Types

Comment: Extensive opposition was voiced against the restriction on 4-bedroom units. While they may not work everywhere there are some communities where the tenant populations and demographics make them an important amenity. Likewise, with the restriction on single-family removed, many single-family dwellings can be viable as 4-bedroom units. Extensive support was extended for the Department having removed the restriction on single-family development because rural areas often have a preference for single-family dwellings and the tax credit program can work as an important tool for producing single-family housing in rural areas. Some confusion was voiced over where the QAP addressed allowing single-family units in rural areas, which was in the 2002 QAP as an exception under Ineligible Building Types. Comment also supported the Department having removed scattered site developments from the definition of an ineligible building type. Department Response: Staff concurs with comment regarding 4 bedroom units and proposes deleting them as an ineligible building type so that developments can include 4-bedroom units. It should be noted that later in this memo staff recommends the removal of "family" points thereby removing any incentive to do 4-bedroom units which will mean that any 4-bedroom units proposed are truly based on market demand. To clarify the confusion regarding single family development in rural areas: because the restriction on single-family, duplex and triplex development was removed entirely from the QAP, no exception is needed for rural areas. As drafted, any development, rural or non-rural, can develop single-family, duplex or triplex developments since it is no longer considered an ineligible building type. No other changes are proposed.

(48) Ineligible Building Types--Those buildings or facilities which are ineligible, pursuant to this QAP, for funding under the tax credit program 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, 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 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 Development with building(s) with four or more stories that does not include an elevator. Board Response: The Board reinstated the restriction on 4-bedroom units with the exception that 4-bedroom units are permitted if the units are single-family dwellings.

§49.3(53)--Definition of Material Non-Compliance

Comment: Broad support was voiced for the changes in the draft 2003 QAP relating to material noncompliance for out of state developers.

Department Response: No changes are proposed.

Board Response: Department's response accepted.

§49.3(54)--Definition of Office of Rural Community Affairs

Comment: Amend to show that ORCA has approval authority over all selection criteria of the rural set-aside and supercedes TDHCAs authority in that regard. Department Response: While the IRS permits more than one allocating agency, TDHCA does not have the authority to designate those entities. The Governor of the State of Texas would need to designate ORCA as an allocating agency. Therefore, neither TDHCA nor the QAP can "give" away its authority to allocate all of the credits for the state of Texas. The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. However, staff did revise the definition of ORCA to more accurately refer to the entity.

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

Board Response: Department's response accepted.

§49.3(57)--Definition of Pre-Application

Comment: Amend by allowing a rural set-aside application form to be prescribed by, and filed with, ORCA.

Department Response: The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process.

Board Response: Department's response accepted.

§49.3(61)--Definition of Qualified Allocation Plan

Comment: Amend by showing that ORCA maintains adopting authority over those portions of the QAP that relate to the rural set-aside.

Department Response: While the IRS permits more than one allocating agency, TDHCA does not have the authority to designate those entities. The Governor of the State of Texas would need to designate ORCA as an allocating agency. Therefore, neither TDHCA nor the QAP can "give" away its authority to allocate all of the credits for the state of Texas. The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process.

Board Response: Department's response accepted.

§49.3(82)--Definition of Unit

Comment: The definition of Unit is unclear about whether the living, sleeping, cooking and sanitation areas have to be separate completely segregated spaces. If it is interpreted to be strictly segregated spaces, this precludes the possibility of loft style or open floor plan developments. The positive attributes of loft style living were described. It was suggested that loft styles only be permitted in adaptive reuse developments to increase the possibility of low income housing remaining available in rapidly gentrifying areas where redevelopment is being prompted. Specific revision language for the definition was provided.

Department Response: The Department concurs that the definition for Unit may need to be "modernized," as with the definition of Bedroom. However, staff feels that more extensive research is required to identify the implications of changes and consider the approach that other states are taking on this issue with the intention of making a recommendation for the 2004 QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.5(a)(4)--Ineligibility

Comment: Comment suggested that the current language regarding audit findings be adjusted because the language is unclear as to whether it refers to the June meeting at which the Board first considers the applications or the July meeting at which the allocations are made.

Department Response: Under 10 TAC §1.3: "a person is not eligible to receive funds, a new contract, loan, or allocation of low income housing tax credits from the department until any unresolved audit finding or questioned or disallowed cost is resolved." The language in the QAP was drafted to give time for applicants to clear up any issues before the Board meets for the first time (June). This gives the Board time to determine another applicant that is qualified to replace the applicant with unresolved audit findings. Clarification is provided with a specific date that allows staff time to review any documents prior to the Board's June meeting.

A Person is not eligible to receive a commitment of 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.

Board Response: Department's response accepted.

§49.5(b)(6) and (7)--Material Non-Compliance for Out of State Developers

Comment: Extensive comment supported the changes made in the draft 2003 QAP.

Department Response: No change is proposed.

Board Response: Department's response accepted.

§49.5(b)--Disqualification and Debarment--Terminology throughout Section

Comment: In paragraphs (3), (5), (6), (7), (8), and (10) the language is as follows: "the Applicant or any Person, General Partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit property..." The use of multiple terms (principals, Affiliates) to try to capture all parties involved in the ownership or control of an enterprise can be confusing. The language proposed will get the Department to the desired result more simply.

Department Response: Proposed language will be replaced at each of the above-referenced paragraphs with the exception that in paragraph (10) the term Related Party was retained as required by §2306.1113 of Texas Government Code.

the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more...

Board Response: Department's response accepted.

§49.5(b)--Disqualification and Debarment--Initial Language

Comment: The current language discusses disqualifying and disbarring an Application and also discusses disqualifying a Person. The QAP should be clarified to show that the Application would be disqualified and the Applicant/Person would be disbarred. In addition, the phrase "Causes for disqualification and debarment include:" could be added at the end of this opening paragraph to enhance clarity.

Department Response: The Department will be working actively through 2003 for a more defined debarment policy and procedure. However, staff concurs with the proposed clarification.

(b) Disqualification and Debarment. Additionally, the Department will disqualify an Application, or debar a Person, if it is determined by the Department that those issues identified in paragraphs (1) - (10) of this subsection exist. A Person debarred by the Department from participation in the program, or an Applicant whose Application has been disqualified, may appeal the debarment or disqualification to the Board. The Department shall debar a Person for the longer of, one year from the date of debarment, or until the violation causing the debarment has been remedied. Causes for disqualification and debarment include:

Board Response: Department's response accepted.

§49.5(b)(2)--Disqualification and Debarment--Past Department Employment

Comment: What is the implication of the clause "during the two-year period preceding the date the application round begins.." for tax-exempt bond transactions? By definition, the term Application Round only applies to Developments seeking tax credits from the State Housing Credit Ceiling.

Department Response: Staff concurs that the reference to the Application Round makes this difficult to interpret as it relates to bond transactions. Revision is proposed below. Additionally for consistency with the reorganization being implemented at the Department, titles were altered to more accurately reflect the titles of those positions.

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...

(B) the executive director, the deputy executive director for programs, the deputy executive director for housing operations, the director of multifamily finance production, the director of portfolio management and compliance or the director of real estate analysis employed by the Department.

Board Response: Department's response accepted.

§49.5(b)(4)(B)--Disqualification and Debarment--Public Housing/Section 8

Comment: Comment was received that monitoring for this requirement is essential and it was requested that the complex should be mandated to advertise its obligation to accept Section 8 tenants. It was also suggested that the Department clarify that the applicant can replace private activity bond financing of the development if one third of the units are public housing units or section 8 development-based units, and the applicant proposes to maintain the project's original affordability percentages. The current language can be interpreted to mean that the project must maintain all of the units as affordable if financing is proposed to be replaced as opposed to 100% of the units that are designated as affordable in their original allocation agreement.

Department Response: Staff does not feel that owners need to advertise their acceptance of Section 8 tenants beyond their existing requirement to notify the public housing authority as the housing authority is the primary referral source for low income voucher holders. Section 2306.6703 of Texas Government Code provides the requirement verbatim relating to private activity bond financing. No changes are proposed.

Board Response: Department's response accepted.

§49.5(b)(6)--Disqualification and Debarment--Material Noncompliance

Comment: It is proposed that the language be revised to clarify terminology and address the Material Non-Compliance correction period for applications involving Tax Exempt Bond Developments. It was suggested that they should probably be completed within a certain number of days prior to the Board meeting at which the Application is considered.

Department Response: Staff concurs with these revisions, although the date chosen for corrections to be submitted for bond developments must be prior to the receipt of the Volume I, since noncompliance reports are run on the day the Volume I is submitted. Corrections would clearly need to be submitted prior to the day the report is run. Clarification of QAP reference in last sentence for referential integrity. Section 49.13(a)(6) was also revised to reflect these changes for consistency.

(6) the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other low income rental housing properties in the state of Texas funded by the Department 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 on the date the Application Round closes or upon the date of filing Volume I of the Application for a Tax Exempt Bond Development, and such Material Non-Compliance is not corrected as provided herein. Any corrective action documentation affecting the Material Non-Compliance status score for Applicant's competing in the 2003 Application Round must be received by the Department no later than February 1, 2003, and any corrective action documentation affecting the Material Non-Compliance status score for Applicants with a Tax Exempt Bond Development must be received by the Department no later than 30 days prior to the submission of Volume I. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §49.9(e)(8)(C) and (D) of this title; however, the records of the Department are controlling; or, Board Response: Department's response accepted.

§49.5(b)(7)--Disqualification and Debarment--Out of State Noncompliance

Comment: Comment suggested that because §49.5(b)(6) allows for correction of Material Non-Compliance by a certain date, §49.5(b)(7) should also permit a similar opportunity to cure.

Department Response: Section 42 of the Internal Revenue Code requires notification to an applicant when a state identifies noncompliance. Therefore, the development owner has had ample time and notification by the state in which the violation(s) have occurred to remedy or cure the violation. The date in §49.5(b)(6) merely provides a cut-off date for Texas developments so that the Department has time to enter all corrective actions received into the status system to run the status reports. No changes are proposed.

Board Response: Department's response accepted.

§49.5(b)(8)--Disqualification and Debarment--Nonpayment of Fees

Comment: Comment supported the department utilizing inspections performed by the construction lenders and syndicators as proposed in the draft 2003 QAP. It was suggested that a change be made to clarify that fees that are outstanding, but not past their due date, should not be grounds for disqualification.

Department Response: Staff concurs with the clarifying language.

the Applicant or any Person, General Partner, General Contractor and their respective principals or Affiliates active in the ownership or control of other low income housing tax credit properties in the state of Texas has failed to pay in full any fees billed by the Department after the due date has passed, as further described in §49.21 of this title; or"

Board Response: Department's response accepted.

§49.5(b)(10)--Ex Parte

Comment: It was suggested that some means of communication is needed during the cycle. The weekly meetings last year were good, but were too late. Perhaps meeting with a combination of three committee members, or meeting with a committee member, the Deputy and a secretary, would be suggested alternatives.

Department Response: The department intends to again hold weekly meetings and will strive to find an acceptable forum for addressing applicant's communication needs. However, the approach the department will take in working towards this accessibility is not a policy issue for inclusion in the QAP, but rather an administrative decision that will be made as the cycle opens. No changes are proposed.

Board Response: Department's response accepted.

§49.5(c)(4)(B)--Certain Applicant and Development Standards

Comment: The language that states "breached a contract with a public agency" disqualifies an Applicant that has contracted or intends to contract with any Person that has ever breached a contract with a public agency. Because it is broadly drafted, it presents several problems: (1) What if the Applicant is not aware of the breach? Shouldn't there be some opportunity for the Applicant to correct the situation if it discovers a problem? (2) What if the Person breached a contract but subsequently cured the breach? The Department should only be able to disqualify an Applicant if the Person in question has an outstanding breach with a public agency that has not been appropriately cured. (3) What if the public agency alleges the Person breached the contract but the Person disagrees and a bona fide dispute exists? If the Person accused of breach is actively pursuing resolution of the dispute and defending itself, then an Applicant should not be disqualified. There should be some concept of a final determination as to the breach. (4) Does "breach" mean a material breach, or can it include any technical breach?

Department Response: The Department has integrated this language verbatim directly from §2306.223. Staff recommends keeping this language consistent with legislation.

Board Response: Department's response accepted.

§49.5(c)(4)(C)--Certain Applicant and Development Standards

Comment: In the clause, "misrepresented to a subcontractor the extent to which the developer has benefited..." to what kind of subcontractor is it intended to apply?

Department Response: The Department has integrated this language verbatim directly from §2306.223. Staff recommends keeping this language consistent with legislation.

Board Response: Department's response accepted.

§49.5(d)--Representation by Former Board Member or Other Person

Comment: One comment suggesting adding a grandfather clause for employees who left the department prior to the enactment of the provisions contained in Senate Bill 322, prior to September 1, 2001. It was also suggested that a minor revision would better balance the sentence.

Department Response: The Department does not have the authority to grandfather a legislative provision. Clarifying change is supported by staff. However, for consistency with the reorganization being implemented at the Department, titles were altered to more accurately reflect the titles of those positions.

(1) a former Board member or a former executive director, deputy executive director for programs, deputy executive director for housing operations, director of multifamily finance production, director of portfolio management and compliance or director of real estate analysis 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 ceases;

Board Response: Department's response accepted.

§49.6(a)--Floodplain Restriction

Comment: The limitation on no development in a 100 year floodplain is inappropriate and its removal is recommended. Most land in Harris County at an acceptable price, and along the coast, has floodplain issues. Suggestions for alternatives included revising the requirement so that all building slabs must be at least one foot above the 100 year flood plain and parking and drive areas should be no lower than six inches below the floodplain, subject to more stringent local requirements; or that at least overflow or visitor parking be permitted in a 100 year floodplain. This protects the viability of the development but allows developments to proceed that would be eliminated from consideration.

Department Response: The Department agrees that the 100 year floodplain restriction can be made somewhat less restrictive. However, the language from 2002 was not quite specific enough as to what the Department would permit. The Department thinks that more research needs to be done on this issue for 2004, but as an interim solution that is more restrictive than 2002, but less restrictive than the draft 2003 QAP, compromise language based on comment is proposed.

(a) Floodplain. Any Development 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."

Board Response: Department's response accepted.

§49.6(d)--Credit Amount

Comment: Several comments opposed the inclusion of "entities receiving a portion of the developer fee" for purposes of evaluating the $1.6 million cap per Applicant. Developers with limited net worth (many of whom are HUBs) have historically brought in partners with a higher net worth to provide guarantees and gave that more experienced partner a portion of the developer fee. It was requested that the language go back to the 2002 language. Conversely, the current language was widely supported and it was suggested that the evaluation be made even more restrictive and include "anyone who is anticipated to provide, for a fee, a guarantee to secure equity or financing for the transaction." Another suggestion was that it should include employees of the

developer/applicant and anyone who receives a portion of any contractor overhead or profit. It was recommended that the term "Related Party" be removed as this definition is nebulous.

Comment was also received that to help the department get more information about the parties behind the developments we can require the applicant to obtain a letter from his/her syndicator or investor listing the names of the prospective guarantors for the developments. By gathering this information, the syndicator would be able to notify the department who is really benefiting from fees and cash flow. Another suggestion was that syndicators and/or lenders should notify the department after a deal closes confirming that the GP stayed who was originally indicated. Add to Application Submission Procedures Manual and addendum to the Development Cost Schedule that the contractor or its affiliate are not receiving any other fees for guarantees in excess of the 6%-6%-2% guidelines.

Another comment suggested that if the 76 unit cap for rural developments is removed the limit should be increased to $1,950,000 per applicant. Recommend, to encourage viable partnerships, changing the cap determination to a prorated distribution of the higher of the developer fee or ownership interest, directly or indirectly. For example, if a nonprofit partner were getting 25% of the developer fee, and the developer fee was $1,000,000 only $250,000 would be attributed against their cap/applicant. To avoid abuse, recommend the use of an affidavit stating the amount of beneficial ownership.

Some suggested changes to the initial statement were suggested for clarity. It was also suggested that paragraph (3) be revised to identify that another key role that non-profits often play with regard to Developments is social service provision. Comment was received asking that the $1.6 million cap be applied fairly to all applicants.

Department Response: The Department has been challenged by improving the monitoring and evaluation of the $1.6 million limit per Applicant. While staff acknowledges that this is "evolving" language that will need further refinement, it also feels that the efforts to date are a step in the right direction. Therefore, staff does not recommend the removal of "entities receiving a portion of the developer fee," although that clause has been replaced by the word "Developer" as a proposed defined term. Staff concurs with the widely supported addition of those guaranteeing the financing for fee as they derive a similar benefit as the other parties being restricted. Staff does not feel that this should extend to employees of developers or applicants, or to contractors, as the extent of the restriction becomes excessive. Staff concurs with the removal of the term "Related Party" because of its tenuous nature.

Staff appreciates comments received on how to best gather the information to monitor this restriction. Suggestions relating to requiring documents from syndicators are not proposed for 2003 as they require adequate dialogue with syndicators/lender to establish procedures for implementation; however these comments will be considered as the 2004 QAP is drafted. The Department does intend to create an exhibit for the 2003 application that will require the provision of information relating to this restriction including an affidavit stating all parties to whom the restriction applies, and will add a clause to the Development Cost Schedule requiring that the contractor or its affiliate certify that they are not receiving any other fees for guarantees in excess of the 6%-6%-2% guidelines. While staff is aware of the support for evaluating the cap by prorating the distribution of credits based on the ownership interest (or developer fee), the level of administrative oversight for that type of restriction is quite onerous. At this time staff does not recommend this revision although it will be taken into consideration for the 2004 QAP. Revisions for clarity and relating to nonprofits were accepted.

The Department shall not allocate more than $1.6 million of tax credits in any given Application Round to any Applicant, Developer, or entity that provides, or is anticipated to provide, for a fee, a guarantee to secure equity or financing for the transaction. Tax Exempt Bond Development Applications are not subject to these credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:

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

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

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

(4) to a Development Consultant with respect to the provision of consulting services.

Board Response: Department's response accepted.

§49.6(e)(1)--Limitations on Size of Developments--16 Unit Minimum

Comment: It was recommended that the limit to 16 units be amended to include single-family developments because multifamily developments may not be a viable option in many rural communities and rural areas often have a preference for single-family dwellings. The tax credit program is an important tool for producing single-family housing in rural areas. It was also suggested that the 16 unit minimum be removed for nonprofit organizations.

Department Response: The Department feels that a minimum of 16 units is acceptable--developments smaller than this make monitoring onerous and reduce any economies of scale for the developer. It should be noted that single-family developments are permitted as currently drafted as long as there are at least 16 single family dwelling units in the development.

Board Response: Department's response accepted.

§49.6(e)(2)--Limitations on Size of Developments--Unit Maximums

Comment: Support was given for the removal of the 76 unit cap on the rural set-aside developments because it allows each development's size to be individualized to the communities needs and market demand and also allows for better economies of scale. However, there was extensive opposition to the removal of the 76 unit cap and support for reinstating the 2002 language. Reasons for concern included that the 15% rural set-aside figure is successful because of the unit cap restriction, the cap allows credits to be spread over more rural areas, and truly rural areas will be penalized if the cap is removed. One comment suggested that if the 76 unit cap is not reinstated, the department should evaluate rural units caps in relation to the low income targeting

exhibit. One suggestion for the rural set-aside cap was to determine the per capita amount of credits that each city/county would get and then allow a development that size--the credits would need to build up for several years. It was suggested that the count would start as of 2000.

It was recommended by DHA that to better accommodate the PHAs goal of replacing and deconcentrating their stock, they need to be able to move some of the replacement housing off-site. The off-site replacement units do not negatively impact the housing market because they replace demolished units and the proposed tenants are drawn from the former tenants of the demolished units. Therefore, it is suggested that the language relating to second phases be revised to accommodate these scenarios.

The term "stabilized" needs to be defined more clearly for this section and the date which it would need to be met in relation to the application cycle should be determined. Perhaps the definition of "Sustaining Occupancy" from the Underwriting guidelines could be used to provide clarity, or a 1.15 to 1 debt service coverage on permanent loan or permanent loan commitment debt could be used.

Support was given for keeping the tax credit development limit at 200 units because it diversifies risk and reduces concentration. Conversely, there was strong support for changing §49.6(e)(2) to say that 9% credits will be permitted at the 250 unit level but that only 200 of the units can be low income. It was also recommended that for 2004 bond developments be allowed to increase to 280.

Department Response: Based on public comment staff is recommending the reinstatement of a 76 unit cap for Developments in the Rural Set-Aside. Suggestions from the public housing authorities relating to replacement housing are recommended. Clarification regarding stabilization was provided by referring to Sustaining Occupancy, a defined term in the Underwriting Guidelines. Staff concurred with the recommendation to allow 250 units, as long as only 200 of the units are low income, for the competitive cycle, but did not concur with increasing the bond developments to 280 primarily in an effort to reduce low income concentration.

(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Study clearly documents that larger developments are consistent with the comparables in the community and that there is significant demand for additional Units. Rural Developments exceeding 76 Units based on the Market Analysis will be ineligible for the Rural Set-Aside.

(3) Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units. Tax Exempt Bond Developments will be limited to 280 Units. For the 2004 Application Round, Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units, wherein the maximum rent restricted Units will be limited to 200 Units. For Applicants competing in the 2004 Texas Bond Review Board Multifamily Lottery, Tax Exempt Bond Developments will be limited to 250 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum unit restrictions. For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy for at least six months.

Board Response: Department's response accepted.

§49.7(b)--Set Asides

Comment: Two comments suggested that the rural set-aside be increased from 15% of the credit ceiling to 25% of the credit ceiling. Statistics were provided that indicated roughly 25% of the state's population lives in rural areas and that on a national basis rural areas account for 42% of all substandard housing. Adjusting the rural set-aside amount better enables all communities to participate in the LITHC program. Comment was received opposing the fact that the rural set aside is met statewide before the general set-aside making some general deals not able to get an allocation in some regions. Similarly, another comment criticized that the elderly set-aside is evaluated statewide and thought it should be evaluated on a regional basis. Comment supported allowing applicants to compete in more than one set-aside, however some concern was voiced that this may work against rural areas or nonprofits. Clarifying language for the At-Risk Set-Aside was also provided because the current language implies that 15% of the tax credits actually will be allocated to At-Risk Developments, even if the At-Risk category is undersubscribed. The recommended language indicates that 15% of the allocation will be set aside for these deals but does not require the actual allocation of 15% of the credits if there are not sufficient qualified Applications.

Department Response: The Department, along with the Rural Rental Housing Association, does not support an increase of the Rural Set-Aside. The Set-Aside has a low oversubscription rate; to increase the set-aside at this time would result in the very least competitive rural applications getting awards, which is not in the best interest of the Department or the tenants. The Department will continue to ensure that all non-General set-asides are met statewide as this ensures that the best developments in each set-aside are selected. For consistency with the Unit cap being reinstated on the Rural Set-Aside the mention of the cap was added back into the Set-Aside language. The clarifying language for the At-Risk set-aside was integrated.

(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which meet the Rural Development definition or are located in Prison Communities. Rural Developments applying for greater than 76 Units will be ineligible for the Rural Set-Aside. Of this 15% allocation, 25% will be set-aside for Developments financed through TX-USDA-RHS. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified applications submitted for the TX-USDA-RHS set-aside, then the credits would revert to Developments that meet the Rural Development definition or are located in Prison Communities.

(3) At least 15% of the State Housing Credit Ceiling 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 and in both urban and rural communities in approximate proportion to the housing needs of each uniform state service region.

Board Response: Department's response accepted.

§49.8(b)--Pre-Application Evaluation Process

Comment: Comment was received asking that the language relating to USDA eligibility be revised to be clearer in subsection (b). Comment was also received supporting the changes to the pre-application process including the reduction of points and the reduced level of staff review. Comment suggested making ORCA the entity responsible for determining if applications submitted under the rural set-aside have satisfied all relevant criteria. As it relates to the "requested" evaluation of the concentration policy, the QAP needs to clarify who would make the request.

Department Response: Clarification on USDA eligibility is recommended. The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. Clarification regarding the request for the concentration policy is recommended.

(b) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, and as requested by the Applicant, evaluated in regards to the Department's concentration policy. Any Application from a TX-USDA-RD 515 Development (including new construction and rehabilitation) is exempted from the Pre-Application Evaluation Process and is not eligible to receive points for submission of a Pre-Application. An Application that has not received confirmation from the state office of RHS of its financing from TX-USDA-RHS may qualify for Pre-Application points, but such points shall be withdrawn upon the Development's receipt of TX-USDA-RHS financing.

Board Response: Department's response accepted.

§49.9(a)--Application Submission

Comment: As it relates to the restriction for only one application to be submitted for a site during the application acceptance period, clarification is needed. The Application Acceptance Period encompasses both Developments seeking State Housing Credit Ceiling and Tax Exempt Bond Developments. As you know, Applicants that are unsuccessful in competing for State Housing Credit Ceiling often apply for tax exempt bond allocations. Therefore, it may be possible that more than one Application for the same site could be submitted in the same Application Acceptance Period.

Department Response: Clarification is provided to refer to the Application Round which applies only to the applications competing under the Credit Ceiling.

Only one Application may be submitted for a site in an Application Round.

Board Response: Department's response accepted.

§49.9(c)--Evaluation Process

Comment: Comment supports the 2003 QAP as drafted. One comment suggested making ORCA the entity responsible for determining if applications submitted under the rural set-aside will be sent to underwriting. One comment asked that correctable deficiencies be identified as administrative deficiencies for clarity and address what ranking is referred to in paragraph (2).

Department Response: The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. Clarification was given regarding administrative deficiencies and ranking.

Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of Administrative Deficiencies, in which event the Applicant shall be given an opportunity to correct such deficiencies." "Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for purposes of releasing the Submission Log in ranking order by score.

Board Response: Department's response accepted.

§49.9(d)--Required Pre-Certification and Acknowledgement Procedures

Comment: Comment was received asking that the general contractor be added back into the QAP as a source of experience. By having removed the general contractor as a source of an applicant's experience the Department will have an extremely detrimental effect on the number of Historically Underutilized Businesses (HUBs) able to participate in the program, as well as other applicants with limited experience. By no longer allowing those with limited experience to enter the program and gain experience by partnering with an experienced general contractor, the Department forces the inexperience applicant to either cede control and interest in the property or not participate in the program--neither of which are acceptable options to the people making the comments. Because the $1.6 rule is in place the experienced partners will not see a need to have an ownership partnership with an inexperienced applicant but will instead do their own developments, making it almost impossible for an inexperienced applicant to gain entry into the program. Conversely, broad support was provided for sustaining the removal of the GC from the experience requirement.

It was also suggested that the experience of the management company be added as a possible source of experience because they are involved for the duration of the operation of the development. It was also suggested that because PHAs, as governmental entities, must be treated uniquely because they must create a nonprofit entity to develop tax credits that do not have members, principals or shareholders, but rely instead on the experience of PHA staff. It is requested that a clause be added allowing PHAs to count their staff experience as the experience of the PHA.

Comment was received indicating that the certification should not have to be requested for developments who already have qualified with an experience certificate in the past and that the department should automatically provide it to anyone with the acceptable experience in our records. It was also suggested that the "list" of persons who are eligible for the experience should be revised for clarity to show the Applicant, Development Owner, Developer, or their respective Affiliates.

Department Response: The Department believes that limiting the development experience to those with an ownership interest

and those receiving a Developer Fee ensures that the necessary experience is in the hands of those with the most control over the development. While the Department sees merit in evaluating the experience of the management company, the experience threshold and documentation requirements for that proposal warrant more research prior to implementation. The clarifying language for PHAs was added. Certifications from 2002 can be used by applicants for 2003 if they prefer not to request a new certification, however the Department will not automatically send an updated certificate without a request being made. Staff does not suggest revising the parties for who experience can be accepted. Additionally, in paragraph (2) relating to the acknowledgement staff noted that the people required to submit the financial acknowledgement form were different from the people required to submit the same form as referenced in threshold. Therefore, staff has adjustment the language in this section to match the language in threshold for consistency and to more accurately reflect the name of the form.

Evidence must show 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 a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, General Partner, developer or managing member. If a Public Housing Authority organized an entity for the purpose of developing residential units or comparable commercial property, the Public Housing Authority shall be considered a principal for the purpose of this requirement.

A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any Person with an ownership interest in the General Partner (or Managing Member), interest in the Applicant, or the Developer, or anticipated to provide guarantees to secure necessary financing.

Board Response: Department's response accepted.

§49.9(d)(1)(B)--Required Pre-Certification and Acknowledgement Procedures--Documentation

Comment: Comment suggested that the references to who needs the experience in subparagraph (B) and in clause (ii) needs to match who needs the experience in §49.9(d)(1).

Department Response: Clarifying language for consistency with §49.9(d)(1) was provided.

(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 appropriate documentation 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."

Board Response: Department's response accepted.

§49.9(e)(4)(A)--Threshold Criteria--Amenities

Comment: It was suggested that pay phones seem a minor amenity compared to the other features on the list and that perhaps something more comprehensive should replace it. It was also suggested that pay phones be mandatory at all developments.

Department Response: Pay phone are an amenity to the tenants that the Department values. It is increasingly difficult to get pay phones installed which makes them on par with some of the other amenities listed. No changes are proposed.

Board Response: Department's response accepted.

§49.9(e)(4)(D)--Threshold Criteria--Use of Minority Businesses Certification

Comment: It was suggested that this language be deleted and made a requirement of the construction loan closing or cost certification because this seems the more appropriate time for reporting this information. It was also proposed that the language specify that the report only be required while the development is under construction.

Department Response: Section 2306.6734 of Texas Government Code instituted this requirement. The department must require a person who receives an allocation of credits to attempt to ensure that they will meet this requirement. The Department feels therefore that the certification must be signed at application, before a commitment of an allocation is generated. The legislated requirement does not limit the time period for submitting the report each 90 days only to the duration of construction; therefore neither will the Department limit the time period.

Board Response: Department's response accepted.

§49.9(e)(4)(E)--Threshold Criteria--Section 504 Requirements

Comment: Comment was received strongly supporting the existing language in this section and commends TDHCA for making this strong commitment to the disability community. There was a recommendation to remove the §504 accessibility requirements for rehabilitation developments because it is cost prohibitive and will greatly reduce the at-risk and/or preservation applications. Applying §504 criteria is very expensive and can be problematic for rehabilitation Developments that are small or in rural or low-income areas. We understand that the Department believes the equity from the tax credits should be used to help the Development achieve these standards, but the tax credit equity simply may not be enough to cover the cost. One compromise may be to require the satisfaction of §504 standards for rehabilitation Developments if the total cost of rehabilitation exceeds 50% of the appraised value of the Development. This is a standard commonly used by municipalities in their building codes and therefore would be consistent with local practice.

Department Response: The Department concurs with the critique that rehabilitation can be quite costly as it relates to implementing accessibility standards. However, §504 has already addressed a more limited standard for existing developments undergoing alterations, as further described in §8.23 of 24 CFR Part 8 Subtitle A. As similarly proposed in comment, it only requires the higher level of redesign (as required of new construction) if the development has 15 or more units and the cost of the

alterations is 75% or more of the replacement cost of the completed facility. No changes are proposed.

Board Response: Department's response accepted.

§49.9(e)(4)(F)--Threshold Criteria--Energy Saving Devices

Comment: Comment was received suggesting that energy saving devices should be integrated as a point incentive in the selection criteria instead of as a threshold requirement so that developers can develop each application to meet region-specific needs. Comment was also received indicating that R-15 insulation is much more costly than R-13 and that if R-13 insulation is used on exterior walls with all cracks properly sealed with a sealant that it is as good as, if not better than R-15 alone. Also because most heat loss is through the roof or ceiling, R-36 is preferable to R-30 for insulation in the attics. Comment also suggested that for rehabilitation developments where the R-30 factor is impractical or infeasible (insufficient space) that a smaller R value be accepted, possibly also with replacement devices such as duct sealants or a higher SEER rating for the air conditioning. Requiring installation of solar screens or permanently fixed shade devices on sun-exposed windows will inadvertently remove historic structures from competition because these devices alter the exterior appearance of the structure, thereby violating historic preservation codes. Comment supported deleting clauses (v) and (vi) that require ceiling fans and solar screens because these should not be the minimum standard. It was also suggested that in defining energy efficiency ratings, the department needs to strike a balance between energy efficiency and cost savings. For example, gas furnaces being required to have a 90% AFUE rating are more costly. The state energy code that requires an 80% AFUE gas furnace rating has found a more acceptable balance.

Department Response: The Department is striving to generate an Energy Efficiency Threshold for all multifamily developments that indicates a commitment to reduced energy costs for tenants. Retaining the energy saving devices in the threshold criteria of the QAP is an effort in meeting that goal. The Department concurs that R-15 can be costly and believes that R-36 is excessive and cost-inefficient, particularly for some areas of the state. Therefore staff has revised this exhibit to allow developments to meet code as it relates to insulation, which already accounts for insulation relating to rehabilitation. The Department concurs that historic preservation codes should take precedence so a clause has been added to the introduction of the section. The Department recommends retaining ceiling fans but is agreeable with removing solar screens as experts have become increasingly critical of solar screens and they are often inappropriately used. As it relates to the AFUE standard, the Department acknowledges that the AFUE of 90% is more costly to the developer at the time of construction, but that there is a huge service to the tenant, which provides adequate substantiation.

(F) A certification that the Development will adhere to the 2000 International Energy Conservation Code (IECC) and the Department's Minimum Standard Energy Saving Devices in the construction of each tax credit Unit, historic preservation codes notwithstanding. Minimum Standard Energy Saving Measures are identified in clauses (i) - (vi) of this subparagraph. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit prior to the closing of the construction loan and in actual construction upon Cost Certification.

(i) Insulation values must meet the 2000 International Energy Conservation Code (IECC) for the region in which the development is located. Rehabilitation developments must also include soffit and ridge vents.

Board Response: Department's response accepted.

§49.9(e)(4)(H)--Threshold Criteria--Architectural Drawings

Comment: Comment was received asking that the floor plan of a "typical" residential building and common area building be sufficient at application because the current language is confusing as a building may have a variety of floor plan mixes within one residential structure.

Department Response: For underwriting purposes, the department needs a floorplan specific to each floor of each building type actually planned for construction to ensure accurate costing methodology. No change is proposed.

Board Response: Department's response accepted.

§49.9(e)(5)(G)--Threshold Criteria--Site Work Documentation

Comment: Comment indicated concern about the "$7,500 per Unit" number used in this section.

Department Response: The $7,500 per unit figure used in this section is merely a cut-off figure; if an applicant's site costs exceed $7,500 per unit they must submit additional documentation that further substantiates their costs. The figure is not a cap on site costs, but a barometer for receiving more documentation. Interestingly, the average site costs for 2002 applications that were underwritten were $5,897 per unit for new construction, substantially lower than the number used here.

Board Response: Department's response accepted.

§49.9(e)(6)(A)--Threshold Criteria--Site Control

Comment: Language should be revised to show that the site control documentation is in the name of the Development Owner or, if not, should be clearly assignable to the Development Owner.

Department Response: The suggested clarification is provided.

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

Board Response: Department's response accepted.

§49.9(e)(6)(B)(ii)--Threshold Criteria--Zoning

Comment: It was commented by several people that by requiring applicants to have zoning in place by the June board meeting that developers will be competing for a smaller portion of available land because most landowners are reluctant to allow a rezoning of their property (which often involves down zoning from commercial to housing) without an assurance that the buyer will close. The effect of developers competing for fewer acceptable parcels will cause land prices to escalate and thereby undermine the financial feasibility of the development. Other comments were received encouraging the Department to be more restrictive and require appropriate zoning at the time of application because it rewards those developers who have taken those steps prior to submitting their application. However, there was

wide support for the language to remain as proposed with evidence of initial zoning approval and recommendation by April 1. Clarifying comments suggested that the QAP needs to be clearer about what documentation is needed from the P&Z folks; that the April 1 date will not be feasible if Tax Exempt Bond Developments are required to meet this element of Threshold Criteria with regard to zoning; and that in subclause (I) the word "zoning" should be added and that it should say "or that there is no zoning requirement."

Department Response: Staff feels that the existing language is an adequate compromise. It does not allow applicants to receive a commitment of an allocation without having their zoning process under way, but likewise does not restrict improperly zoned properties from competing in the application process. Staff feels that the language regarding approval from the Planning and Zoning commission is specific enough; to be more specific may make attaining documentation more difficult. A clarifying date for Bond Developments was added.

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

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. No later than April 1, 2003 (or for Tax Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed), the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of appropriate zoning to the entity responsible for final approval of zoning decisions (city council or county commission). If this evidence is not provided on or before April 1, 2003, the Application will be terminated. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded."

Board Response: Department's response accepted.

§49.9(e)(6)(C)--Threshold Criteria--Utilities

Comment: Clarification was proposed indicating that the proper party is the Development Owner, not the developer.

Department Response: Staff concurs with the clarification.

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.

Board Response: Department's response accepted.

§49.9(e)(6)(D)--Threshold Criteria--Financing

Comment: Comment supported the current draft that allows applicants until Carryover to demonstrate a commitment from other funding sources. By waiting until after the credits have been committed by the department, this strengthens the applicants appeal to other funders. One comment asked for clarification on whether an executed term sheet is required for both the interim and permanent lender?

Department Response: Clarification regarding the term sheets is suggested.

(ii) bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company..."

Board Response: Department's response accepted.

§49.9(e)(7)(A)--Threshold Criteria--Public Notification

Comment: Suggestion was made that public notices should only be required in community newspapers in smaller outlying communities instead of in the most widely circulated newspaper in the metropolitan statistical area because the cost in the larger papers is higher and the residents of the smaller community are more likely to read their local newspaper.

Department Response: Based on past experience, the Department is aware that often residents read only one of the two newspapers--local or metropolitan. Requiring the notification to run in both newspapers ensures that all interested residents will have an opportunity to be informed. No changes are proposed.

Board Response: Department's response accepted.

§49.9(e)(7)(C)--Threshold Criteria--Notification to TxDOT

Comment: Comment was received suggesting that this requirement only be made if TDHCA is able to enter into a Memorandum of Understanding with TxDOT that identifies a contact person at TxDOT responsible for the administration of the requirement and able to timely provide the required documents. If no MOU can be reached, it is suggested that the rural set-aside be exempt from this requirement. However, there was more widespread support for the deletion of this section for the above reasons. Further there was speculation that TxDOT will not issue a letter until a traffic study has been done which could add additional costs to applicants.

Department Response: The Department concurs that this requirement warrants further dialogue, and a potential Memorandum of Understanding, with TxDOT before making it a minimum requirement of all applicants. Deletion of the section is suggested.

Board Response: Department's response accepted.

§49.9(e)(7)(E)--Threshold Criteria--Public Housing Authority Waiting List Comment: Support was voiced for the existing requirement that the owner be required to notify the PHA of unit availability. It was further requested that since some PHA's have overlapping service areas that all local PHAs be sent this notification; it was recommended that the owner advertise this in newspapers of general circulation. It was suggested that the wording should be revised to read "Section 8 and other tenant-based rental assistance" so that HOME vouchers would also be applicable.

Department Response: Staff does not feel that owners need to advertise their acceptance of Section 8 tenants beyond their existing requirement to notify the public housing authority as the housing authority is the primary referral source for low income voucher holders. Clarification regarding the number of local PHAs is suggested as is the reference to other voucher programs.

(E) Public Housing Waiting List. Evidence that the Development Owner has committed in writing to the local public housing authority(ies) (PHA) the availability of Units and that the Development Owner agrees to consider households on the PHA's waiting list as potential tenants and that the Property is available to Section 8 and other tenant-based rental assistance certificate or voucher holders. Evidence of this commitment must include a copy of the Development Owner's letter to the PHA(s) and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said PHA(s). Proof of notification should not be older than six months from the close of the Application Acceptance Period. If no PHA is within the locality of the Development, the Development Owner must utilize the nearest authority or office responsible for administering Section 8 programs."

Board Response: Department's response accepted.

§49.9(e)(8)--Threshold Criteria--Ownership Documentation

Comment: In subparagraph (A), the QAP currently requires an organizational chart for the General Partner. Comment suggested that the QAP should require an organizational chart for the Development Owner (which would include the identification of the ownership and controlling parties for the General Partner) and the Developer. The elements of this organizational chart, if properly defined, should provide the Department with all of the relevant information necessary to identify ownership and control of these two important organizations. Clarification of wording for subparagraph (A) was also provided. With the proposed revision to subparagraph (A), subparagraph (B) can be simplified, and subparagraphs (C) and (D) should be revised to tie back appropriately throughout the exhibit. Comment seemed to suggest that the documents in this entire section should only be required for those with controlling interests.

In §49.9(e)(8)(B)(i)(II), comment suggested that the Department would be better served by requiring a name reservation and copies of the draft organizational documents for the entity to be formed (Articles of Incorporation, Articles of Organization, Bylaws, Regulations, Partnership Agreement, etc.) in lieu of the letter of intent to organize. Likewise, improvements were suggested for the documentation requirements for entities that are already formed. Other comment supported better clarifying what is required if an entity is formed, but for less than 3 months.

Department Response: Staff was encouraged by the thorough review and positive suggestions for revision and has included all but one item in the proposed changes. The only revision provided in public comment that is not proposed in the QAP is that the set of organization documents should only be required for those with a controlling interest in the development. The Department needs to know who all of the ownership interests are (including non-controlling interests).

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

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

(B) Each entity shown on an organizational chart as described in subparagraph (A) of this paragraph, shall provide the following documentation, as applicable:

"(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas:

(I) a certificate of reservation of the entity name from the Texas Secretary of State and from the state in which the entity is to be formed if different from Texas; and

(II) an executed letter of intent to organize or a copy of the draft organizational documents for the entity to be formed including Articles of Incorporation, Articles of Organization or Partnership Agreement.

(ii) For existing entities whether formed in or outside of the state of Texas:

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

(II) for entities formed in a state other than Texas, a certificate of authority to do business in Texas or an application for a certificate of authority,

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

(iii) the Applicant must provide evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control of the Applicant, and that those persons constitute all persons required to sign or submit such documents. A cover sheet must be placed before the copy of the organizational documents, identifying the relevant document(s) where the evidence of authority to sign is to be found and specifying exactly where the applicable information exists within the all relevant documents by page number or by section and subsection if the pages are not numbered.

(C) Each entity shown on an organizational chart as described in subparagraph (A) of this paragraph, shall provide a copy of the completed and executed "Previous Participation and Background Certification Form." If the developer of the Development is receiving more than 10% of the developer fee, he/she will also be required to submit documents for this exhibit. The 2003 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 Applicant and their Affiliates. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed."

(D) If the Development Owner or the Developer or any of their Affiliates shown on the organizational chart as described in subparagraph (A) of this paragraph (other than the Development Owner's limited partner) 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 that such Persons have sent "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. This form is only necessary when the Developments involved are outside of 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 said agency."

Board Response: Department's response accepted.

§49.9(e)(9)(C)--Threshold Criteria--Utility Allowances

Comment: Comment suggested that the language regarding overlapping jurisdictions should revert to the definition in prior years, or be deleted, because if used by compliance in their monitoring, it could be devastating to the feasibility of many properties. It was also suggested that by not allowing applicants to use the data provided by utility providers we may be violating federal law. It was further suggested that a round table be formed to look at this problem and create a solution that is more workable for all parties.

Department Response: The Department is also concerned that the proposed language may have a negative impact on the feasibility of existing properties. Therefore, for 2003 the Department will utilize the language used in 2002. However, because this language is a challenge for compliance monitoring purposes, the Department intends to establish a working group to develop a more satisfactory solution for 2004. This language was also adjusted in §49.19(t) relating to compliance.

(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.

Board Response: Department's response accepted.

§49.9(e)(9)(D)(ii)--Threshold Criteria--Occupied Developments

Comment: Comment suggested that it was unclear what was intended by the statement: "and consult with the tenants in preparing the application."

Department Response: Section 2306.6705 of Texas Government Code requires that, "a written explanation of the process used to notify and consult with the tenants in preparing the application," is submitted. Neither the legislation, nor the Department, has a specific requirement as to what level of consultation with tenants is necessary, but merely that the applicant inform the Department of any consultation that they have had. No changes are proposed.

Board Response: Department's response accepted.

§49.9(e)(10)--Threshold Criteria--Nonprofit Exhibit

Comment: In order to better protect their assets, it is common for nonprofit organizations that are participating in tax credit projects as General Partners to form wholly-owned subsidiaries to take those roles. The subsidiaries may be nonprofit organizations themselves or, more typically, they may be for-profit organizations such as limited liability companies. This should be contemplated and permitted in this section. If a wholly-owned subsidiary is to be used, the parent nonprofit organization should provide copies of its governing documents and the governing documents of the subsidiary. It was also noted that in subsection (e)(10)(B) the QAP requires documents from the "Development Owner and each General Partner of a Development Owner," although the information requested relates solely to the nonprofit organization and does not relate to the Development Owner or any other General Partner that is not a nonprofit organization.

Department Response: Regarding the suggestion that wholly owned subsidiaries of nonprofits should be permitted in this section it was unclear whether the comment was asking for these groups to be obligated to provide additional information or if special status was being requested. In either case, staff feels that additional time and research would be needed before adjusting this exhibit because this exhibit is related both to Internal Revenue Code requirements as well as Texas Government Code requirements. Additional research will be carried out for 2004. The clarifying language was integrated into the exhibit. Staff also deleted clause (v) because the required list is actually a requirement that has been incorporated into the Nonprofit Participation exhibit required under §49.9(10)(A)(iii) and as included in the Uniform Application.

(B) Additionally, all Applicants 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."

Board Response: Department's response accepted.

§49.9(e)(13)(B)--Threshold Criteria--Market Study

Comment: Comment was received suggesting that when the Underwriting Department utilizes its own information in lieu of the information in the market study, that the applicants should be notified of that replacement. There was also substantial support for the following: In the event of a disagreement between the market analyst and the department's interpretation of the market, an independent third party binding arbitration review should be used to settle the issue because it is the only unbiased resolution to the conflicting views that may be involved. One comment suggested that "developer" be replaced by "Development Owner" as the Development Owner is the proper party to incur these costs.

Department Response: The Department is obligated to satisfy itself that the documentation provided in market studies is accurate. There are instances where the input from two different market studies for the same market shed different results. Therefore, the Department needs the flexibility to request that a subsequent market study be provided by an independent market analyst to satisfy a thorough review. In events where an independent market analyst is not used, the Department is still responsible for challenging the information provided in the market studies. The Department does not support the use of independent third party binding arbitration for this reason, as well as for the administrative technicalities and time constraints involved in administering this type of process. The clarification regarding terminology is suggested.

A comprehensive Market Study prepared at the Development Owner's expense by a disinterested Qualified Market Analyst in accordance with the Market Analysis Rules and Guidelines.

Board Response: Department's response accepted.

§49.9(f)--Selection Criteria--Points for At-Risk and Elderly (Not in 2003 draft)

Comment: There was broad support for having removed points for at-risk and elderly. Comment concurred that the set-asides adequately target development for these categories of need and to allow points could cause oversaturation. However, there was extensive comment indicating that to balance the removal of the elderly points, the points should be removed for units housing individuals with children. If the family points are not removed, then comment would suggest that the elderly points are reinstated because the regional allocation process would result in family deals scoring higher, and receiving an unfair advantage, than elderly developments regardless of local market need. There was some comment supporting the utilization of points for elderly developments because the set-aside alone is insufficient to meet the needs of the growing elderly population on fixed incomes.

Department Response: The Department has made a policy decision that points will not be given for categories for which a set-aside also exists. In that light, no changes are recommended for this section. It should be noted that later in this memo, the Department recommends the removal of points for units housing individuals with children.

Board Response: Department's response accepted.

§49.9(f)--Selection Criteria--Mixed Income Points (Not in 2003 draft)

Comment: Extensive support was received for reinstating points for mixed-income developments, although comment was equally opposed to the language in the 2002 QAP that required market rents to be 110% higher than the LIHTC maximum rents and requiring the units to rent at 105% of the LIHTC maximum rent. By allowing applicants to get points for these units, applicants give up credits which allow TDHCA to allocate those credits elsewhere. Likewise, families who may make too much may be attracted to the supportive service packages at a development and this allows them to lease. As long as the market study justifies the rents to be obtained, the Department should not need to impose additional calculations assessing the viability. Comment states that the mixed income projects have an important public purpose in that they reduce the concentration of low-income people and provide social benefit. They are often preferred by local governments and neighborhoods for this reason. Mixed income transactions can be complex and likely will not be done without a point-driven incentive in the QAP. The 2002 differential requirement was confusing and involved subjective evaluation of the market study. Underwriters for investors require the units to be underwritten at 60% AMGI rent levels so requiring a higher differential is not relative to the actual evaluation taking place in the market. While most suggestions referred to the 2002 point values for the reinstatement, one suggestion was to provide only 1 point for each 5% increment of total units set aside for market rate, up to 20% of the total number of units.

Department Response: The Department concurs that the mixed-income points should be reinstated. Staff does not recommend that an evaluation of the market study be required as different market studies support different information for identical market which bring in quite a bit of subjectivity to the review.

The Development is a mixed-income Development comprised of both market rate Units and qualified tax credit Units. Points will be awarded to Development's with a Unit based Applicable Fraction which is no greater than:

(i) 80% (8 points); or,

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

(iii) 90% (4 points); or

(iv) 95% (2 points)."

Board Response: Department's response accepted.

§49.9(f)--Selection Criteria--Other Suggestions not Currently in the QAP

Comment: One comment suggested that perhaps TDHCA should reinstate the density points, but there was also broad support for having removed the density points. There were also a series of comments requesting that point criteria be added that are not currently in the draft 2003 QAP. These suggestions include points for: having excellent compliance records (specific language was provided); developing adaptive reuse of surplus government buildings (hospitals, hotels, dormitories, schools); having experience, as determined by the number of units placed in service or with 8609 forms; having a 1.15 debt coverage ratio; closing on the construction loan and starting construction by December 2003; providing improved energy efficiency above and beyond the threshold; providing reductions in maintenance and upkeep costs through the use of alternative building materials and techniques; exceeding the storm and fire safety standards outlined in the building code; having a General partner that is headquartered in Texas and has been a Texas resident for at least 3 years; having desirable site features including site readiness (zoning, utilities, paved access) and favorable location near amenities; having a location in the downtown of a large city or county, or in a part of the community that currently lacks affordable housing for the workforce in that area, or in an area generally recognized as unsuitable for families but with a need for affordable housing or in an area offering multiple job opportunities and transit. It was also suggested that significant negative points be given for several years to any developer who violates the $1.6 million cap.

Department Response: Staff was pleased with many of the suggestions that were made for new scoring categories. However, in the interest of ensuring adequate public input in the rulemaking process, the Department does not recommend making any new additions to the selection criteria that were not either part of the 2002 QAP, or part of the draft 2003 QAP, as the public will not have had adequate time to respond to the suggested selection criteria. The list of suggestions will be considered in drafting the 2004 QAP.

Board Response: Department's response accepted.

§49.9(f)(1)(A) - (D)--Selection Criteria--Development Location

Comment: Comment indicated that for those criteria relating to enterprise communities, TIFs and PIDs, a two-tier selection criteria should be established for those regions dominated by large MSAs because smaller counties that share a region with dominating MSAs are less likely to receive credits. It was also suggested that the exhibits be deleted. Separate comment, also relating to TIFs and PIDs (subparagraph (C)), indicated that the requirement to have the development receive significant incentive or benefit from the local government is both costly and very subjective to evaluate. The intent of the requirement originally was so that a developer would not go and have a city create a district solely for the benefit of the development. However, by keeping the requirement relating to the letter from the city, the intent is still satisfied and the subjectivity is removed from the exhibit. So it is suggested that the financial incentive is deleted.

There was strong support for having deleted the QCT points, although there was also strong support to reinstate the DDA

points. Some limited comment opposed the deletion of points for QCTs, suggesting that by removing the points the department may not be adhering to the federal requirement to give preference to QCTs. One other opponent to the removal of QCT points suggested that some QCTs still have no tax credit developments so perhaps points should be given only for QCTs that have no existing tax credit developments. Another comment suggested amending this section by adding that these areas are only (TTCs, EDAs, Colonias, and Young v. Martinez) acceptable for the purposes of awarding points, if there are applications that are denied these points and if the applicable rental rates will warrant economic success of the development. Department Response: The Department feels that it is a good policy to encourage development in those areas that have been designated specifically for development and revitalization, specifically TIFs, PIDs, and enterprise/empowerment communities. While TIFs and PIDs are somewhat more prevalent in metropolitan areas, subparagraph (C) also awards points for any other "area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment," which is just as likely to occur in a rural community as in a metropolitan community. Likewise, enterprise communities exist in both rural and metropolitan areas. Staff does not recommend creating two-tier system of selection review at this time. Staff does recommend the removal of the somewhat subjective and difficult to achieve requirement relating to obtaining incentives or benefits valued at 5% of the Total Development Costs. The 5% requirement was also more onerous for rural or small communities that have an "area or zone...encouraging or channeling growth. Staff also concurred with reinstating the points for DDAs which were inadvertently deleted when drafting the QAP. Staff has thoroughly researched the language in §42 of the Internal Revenue Code which merely requires a "preference" be given for QCTs. While points were removed for location in a QCT, an evaluation factor (tie breaker) was added for location in a QCT, thereby still serving as a preference. Staff is confident that this §42 requirement is not being violated by removing these points. No other changes are proposed.

(A) A geographical area which is:

(i) a Targeted Texas County (TTC) or Economically Distressed Area; or

(ii) a Colonia, or

(iii) a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD.

(C) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. Such Developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed Development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(i) created by the local city council/county commission, and

(ii) targets a specific geographic area which was not created solely for the benefit of the Applicant.

Board Response: Department's response accepted.

§49.9(f)(1)(E)--Selection Criteria--Development Ratio

Comment: Comment suggested that the ratio should be separated between new construction and rehabilitation and between elderly and family in order to diversify a community. Any award older than 5 years should not be included in the ratio. No points should be deducted in this section.

Department Response: The Department is aware that it is preferable to refine this scoring criteria to the level of generating ratios based on new construction vs. rehabilitation and elderly vs. family. However, at this time the compilation of data is not readily available in a format that would permit this type of analysis. Additionally, because the ratio involves population figures, the elderly/family split would involve not only improvement to the tax credit development data source, but also the adjustment of the calculation based on the populations for each of those groups. The Department feels that, even without the further level of classification, this exhibit accurately incentives applicants not to concentration of too many low income families in one area. No change is proposed.

Board Response: Department's response accepted.

§49.9(f)(2)--Selection Criteria--Affordable Housing Needs Score

Comment: Comment was received that the proposed needs score, as generated by the Housing Resource Center, penalizes all the major Texas cities such as Dallas, San Antonio, Houston and Austin, compared to suburbs, by deducting 5 points from each city's score. TDHCA should reinstate these 5 points because the most demand is concentrated in these areas. Other comment was received suggesting that the needs score be deleted entirely from the QAP because the 2003 scores are inaccurate because it makes the incorrect assumption that people with affordable housing needs lives and work in the same community. Likewise, support was provided for keeping the 5 point deduction for cities that have received an award in the past two years because it encourages the dispersion of properties across the state.

Department Response: While the calculation of the Affordable Housing Needs Score, and the five point deduction, are not actually part of the QAP itself, the Department believes that the 5 point deduction will be successful in working towards dispersing properties intraregionally. No changes are proposed.

Board Response: Department's response accepted.

§49.9(f)(3)--Selection Criteria--Support Letters

Comment: Comment suggested that asking for letters is disruptive to communities and divides community support, causing the public to have a negative view of affordable housing. It was requested that, at a minimum, points be removed for federal representatives and senators. One comment pointed out that the cycle is overlapping with elections and that the QAP should specify whose letters should the applicants get: the existing officials who may not be in office by January or the new electees who may be hard to track down in January for a February submission?

Department Response: The use of a selection criteria that rewards applicants for having written support from local and state officials is required under §2306.6710 of the Texas Government Code. Therefore, the Department can not remove this requirement. The Department made an effort to provide a "laundry list" of potential points for applicants and that to be comprehensive this includes points from elected federal officials. A minor adjustment to points is suggested and a clarification added to clause

(iii). The Department does not propose revising the QAP to address elections, but staff will be flexible in reviewing these points as long as the elected official was, or is, the appropriate official for the jurisdiction.

(i) from United States Representative or Senate Member (3 points each, maximum of 6 points)

(ii) from State of Texas Representative or Senate Member (2 points each, maximum of 4 points);

(iii) from the Mayor, County Judge, City Council Member, or County Commissioner indicating support; or a resolution from the local governing entity indicating support of the Development (maximum of 2 points);

(iv) from neighborhood and/or community civic organizations (1 point each, maximum of 2 points).

Board Response: Department's response accepted.

§49.9(f)(4)(B)--Selection Criteria--Family Development Points

Comment: As mentioned earlier in the memorandum, there was extensive comment indicating that to balance the removal of the elderly points, these points should be removed. If the family points are not removed, then comment would suggest that the elderly points are reinstated because the regional allocation process would result in family deals scoring higher, and receiving an unfair advantage, than elderly developments regardless of local market need. Comment was received indicating that points for families are geared primarily to suburban developments, as families tend not to prefer living in the central city, so this is somewhat biased and some type of compensation should be made for downtown developments.

Department Response: The Department has made a policy decision that points will not be given for categories for which a set-aside also exists, specifically the elderly set-aside. Furthermore, staff recommends elsewhere in this memorandum that 4-bedroom units be permitted in tax credit developments. The removal of "family" points thereby removes any incentive to do 4-bedroom units meaning that any 4-bedroom units proposed are truly based on market demand. Based on these other policy recommendations, and public comment regarding the family development points, staff recommends the deletion of this exhibit.

Board Response: To ensure compliance with §42, Internal Revenue Code, the Board reinstated a selection criteria for individuals with children.

(6) Developments Targeting Tenant Populations of Individuals with Children. The Rent Schedule of the Application must show that 50% or more of the Units in the Development have more than 2 bedroom (1 point).

§49.9(f)(4)(C)--Selection Criteria--Cost per Square Foot

Comment: The reference to Exhibit 102 is an improper cross-reference now that the Exhibit numbering has been removed.

Department Response: Correction is recommended.

(C) Cost per Square Foot. For this exhibit hard costs shall be defined as construction costs, including site work, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be hard costs per square foot of net rentable area (NRA). The calculations will be based on the hard cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments do not exceed $60 per square foot. (1 point).

Board Response: Department's response accepted.

§49.9(f)(4)(D)--Selection Criteria--Unit Amenities and Quality

Comment: It was suggested that the following should be added to the amenity list: provision of microwave, provision of plumbing for a refrigerator icemaker and, provision of ceiling fans in bedrooms and living areas. It was also suggested that masonry includes stucco. A similar comment suggested that the Department reconsider the use of hardiplank for points; possibly with stone accent. Comment was also received that we should give amenity points for using gas heat and appliances, or a combination of gas and electric appliances, instead of only electric because it saves the tenant money in the long run even though the initial costs for the developer are higher. Points for tile in the entry way, kitchen and bathroom should also include terrazzo flooring as an option since it provides all the benefits of tile but is more durable. It was suggested that more points should be given for quality long-term construction materials such as longer roof-life warranty or concrete driveways instead of asphalt; other suggestions included 9-foot ceilings and the use of alternative energy efficient materials. There was also support for reinstating the lighting package and kitchen package amenities from the 2002 QAP.

Department Response: The Department does not feel that microwaves or icemaker plumbing are adequate amenities comparable with the other amenities on the list. Ceiling fans are already required in threshold as one of the energy saving devices and so points should not be awarded for them. The Department does not agree that masonry includes stucco--stucco is a much cheaper construction material and according the costing methodology used by the department is not considered to be masonry. Likewise, hardiplank is not classified as masonry. While in some areas gas may be cheaper for tenants, in other areas gas may not be an option at all. Therefore, developments in those areas without an option (often rural areas) would be unfairly disadvantaged. As far as the Department is concerned terrazzo is a type of tile, but does not feel that the QAP needs to detail to that level the exact types of tile that are acceptable. The suggestions of new items warrant consideration, but as commented earlier, the Department does not propose adding any new selection criteria that were not a part of the 2002 or 2003 draft QAP in the interest of assuring adequate public input. These proposed items will be considered as selection criteria are drafted for the 2004 QAP. Staff removed the Lighting and Kitchen Packages from the 2002 draft because they are generally accepted as part of construction and from a cost perspective do not compare to the other point-based amenities on the list. No changes are proposed.

Board Response: The Board added an amenity to the list that gives three points for using energy efficient alternative building materials and specified that stucco is masonry (as long as it does not include efis).

§49.9(f)(4)(F)--Selection Criteria--Operating Reserves

Comment: There was very strong support for deleting these points as the level of appropriate operating reserves will, and should be, dictated by those investing and/or lending to the development, and is an issue that is best evaluated by the Department as a component of underwriting. Furthermore, because point-based criteria are integrated into the LURA, there are a myriad of questions that would warrant resolution before this exhibit should be retained: is the reserve a one time funded

amount? How long will it be held? Who monitors this and what are the penalties of noncompliance? What are eligible uses for the funds? Is this in addition to the lender and/or syndicator reserves? It was suggested that the points be removed and that instead the Department should ensure that each development is underwritten at a minimum of three months of operating expenses plus hard debt service. Very minimal support was provided for these points: one comment suggested increasing the points for this item and other comments suggested that the reserve per unit should be raised to $2,000, or at least $250. Another alternative suggestion was to give points for additional dollars added to the replacement reserve account with the lender, or for a separate long term maintenance reserve, while another suggestion was that it might make more sense to have a number of months of operating costs plus debt service.

Department Response: The Department concurs that this exhibit should be removed from the 2003 QAP. While there may be merit to providing points for some type of reserve, the many comment and questions emphasize that the exhibit needs substantial revision and research to ensure that it is feasible and enforceable. This will be further investigated for 2004. For 2003, the Underwriting Guidelines require that operating budgets are underwritten with $200 per unit for new construction and $300 per unit for rehabilitation developments. It additionally requires that an operating reserve be included in the development budget showing at least 3 months of operating expenses less management fees plus debt service.

Board Response: Department's response accepted.

§49.9(f)(4)(H)--Selection Criteria--Small Developments

Comment: Comment was received questioning why the Department gives points for small developments. If this was intended to be a score boost for rural deals, it is arbitrary because a specific number of units can not adequately address what is supportable by the market. The exhibit either encourages more units than are supportable or keeps developments from achieving optimum economies of scale, therefore the exhibit should be deleted.

Department Response: The small development points were created to encourage dispersion within a city and reduce concentration of low income tenants. The points help to incentivize applicants to develop small developments in spite of the higher costs associated with their development. No change is proposed.

Board Response: Department's response accepted.

§49.9(f)(4)(I)--Selection Criteria--HOPE VI, 202 and 811

Comment: Comment was received advocating that the LIHTC program adhere to the Department's integration policy and only give points to 811 developments that support integrated settings where people with disabilities live with people without disabilities. It was noted that the deadlines for HOPE VI grants this year are due on December 6, 2002 and that this may make it difficult to have appropriate evidence that the application was timely filed with HUD. It was suggested that points should also be awarded if the development has a Community Development Block Grant or project-based vouchers from HUD. Another suggestion recommend adding the HOME Program to the list. Another comment suggesting adding points for large contributions of at least $500,000 from local community funding--this should replace the requirement of needing a subsidy for the low income targeting exhibit. There was also a suggestion to require proof of award/commitment of Section 202, Section 811, and HOME at the time of application, not merely proof of application, while HOPE VI should only need proof of application. Another comment asked that the Department clarify what occurs if the Development applies for the funds and, subsequent to the Application but before the allocation, HUD advises that the funds will not be awarded, since actual commitment are not required.

Department Response: In light of the legislative requirement at §2306.6710(b)(1)(G) to give points for the commitment of funds to better enable developments to serve lower income families, the Department concurs with expanding this exhibit to include the other suggested funding sources including Community Development Block Grants, project-based Section 8 vouchers from HUD, and HOME awards. It should be noted that later in this memorandum the deletion of the subsidy requirement for low income targeting is recommended. The suggestion in 2002 that the subsidy is required by legislation is similarly satisfied by a separate award of points for subsidy as proposed on this exhibit. The LIHTC Program strives to adhere to the integration policy, and has proposed a revision to this section to further support that effort. The documentation required to prove that a HOPE VI grant application was submitted is a letter from HUD indicating that the application was received. With a deadline for the grant of December 6, and a LIHTC deadline for evidence of this not until February 28, almost three months are available for a receipt to be obtained, which is more than adequate time.

(15) While staff understands the concerns regarding applications that have been submitted, but not yet awarded, at the time of tax credit application, the Department still feels that an application, as a costly and time-consuming effort, is an excellent good-faith effort to obtain funds and that to accommodate varied application cycles of other entities, the existing language should remain. However, staff has clarified in the exhibit when funding must be received and what will occur if funding is not ultimately awarded.

(I) Evidence that the proposed Development is partially funded by a HOPE VI, Section 202 or Section 811 grant or project-based Section 8 voucher from HUD; or a Community Development Block Grant or HOME award. If the proposed Development involves a Section 811 grant the Applicant must provide evidence that the Development will comply with the Department's definition of Integrated Housing. The Development must have already applied for funding from the funding entity. Evidence shall include a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. Notice of actual commitment must be received consistent with §49.9(e)(6)(D)(iii). In the event that an award is not made by the funding entity, the Department will reevaluate the Application to ensure its continued financial feasibility (5 points).

Board Response: Department's response accepted.

§49.9(f)(4)(J)--Selection Criteria--PHA Rehabilitation

Comment: Many comments were received in opposition to the PHA points and suggesting their removal. Some comment pointed out that by giving 5 points to PHAs (in addition to the HOPE VI funding points) for doing rehabilitation on units that are already affordable, and not at risk of losing their affordability, the Department is taking away scarce resources from developments that could actually be at risk of losing affordability or that are existing market rate developments. TDHCA would be putting money into units that already are, and will be, affordable, and not producing new affordable units. Opposition to the points also indicated that the tax credit program has historically been a "private sector" funding source that has been successful because it does not put credits into the hands of "inefficient"

public sector entities who have to adhere to more onerous bidding, procurement and labor regulations. Another argument suggests that PHAs can qualify under the nonprofit set-aside and therefore should not also be able to get points. It was pointed out that only metropolitan PHAs have the sophistication and expertise to participate in the LIHTC program so these points would be difficult to obtain for rural PHAs. It was also commented that PHAs already have numerous other pools of funds to draw from that in many instances are specifically limited too PHAs only and that extra points to help them also access credits should not be given to them. It was suggested that if these points are retained they should be added into paragraph, Sponsor Characteristics, as another alternative to HUB or Joint Venture status.

Alternatively, there was also support for keeping the PHA points. It was noted that PHAs do not qualify for the nonprofit set-aside and are not able to gain that advantage, particularly as defined by the Internal Revenue Service. Support indicated that PHAs help serve the lower income families and TDHCA is tasked with also trying to better serve those families.

Other suggested changes included the suggestion that Housing Finance Agencies should be added to this pool of points in addition to PHAs. If HFAs are not included, language should make it clear that PHAs do not include HFAs. It was also suggested that new construction should also get points. Another comment was that PHAs are often faced with demolition due to poor design flaws and obsolete structures, and therefore rehabilitation is not always an option. PHAs requested that the points be available for replacement housing that is located either on or off-site. PHAs also noted that the language indicating that the units "will continue to be owned" by the PHA is inaccurate because the limited partnership will actually own the development and this language may not rest well with equity providers.

Department Response: The Department, as a policy, is trying to increase collaboration with Public Housing Authorities. Staff concurs with the interpretation that PHAs are not eligible for the nonprofit set-aside and therefore do not already garner any special standing. Furthermore, PHAs offer an excellent opportunity for the Department to reach the lower income families across the state. and therefore staff recommends retaining this exhibit. However, to assuage some of the opposition to the exhibit staff suggests adding it to paragraph (5), Sponsor Characteristics, as subparagraph (C), thereby reducing it to a 3 point value. Staff also suggests making the clarification regarding replacement of existing housing to accommodate the reality of development for PHAs. Clarification regarding Housing Finance Agencies is also provided to show that they are not included in this item.

(5) Sponsor Characteristics. Developments may only receive points for one of the three criteria listed in subparagraphs (A) - (C) of this paragraph. To satisfy the requirements of subparagraph (A) or (B) of this paragraph, a copy of an agreement between the two partnering entities must be provided which shows that the nonprofit organization or HUB will hold an ownership interest in and materially participate (within the meaning of the Code §469(h)) in the development and operation of the Development throughout the Compliance Period and clearly identifies the ownership percentages of all parties (3 points maximum for subparagraphs (A) - (C) of this paragraph).

(C) The proposed Development involves the rehabilitation of existing Units, or on-or off-site replacement of units that are owned by a Public Housing Authority and which Units or replacement Units will continue to be owned by a partnership Controlled by said Public Housing Authority or its nonprofit affiliate as evidenced by a partnership agreement showing the Control by the said Public Housing Authority. A Housing Finance Agency is not considered to be a Public Housing Authority for purposes of this exhibit.

Board Response: Department's response accepted.

§49.9(f)(5)--Selection Criteria--Joint Ventures and HUBs

Comment: Support was given for keeping the joint venture and HUB points as currently drafted. One comment suggested that joint ventures with nonprofits should only get the points if the nonprofit has control of the project. It was suggested that the PHA points should be moved to this section and act as another alternative--you can get points as a joint venture, as a partner with a PHA or as a HUB. There was also broad support for adding another category to reward successful nonprofits for solid performance history by giving points to Qualified Nonprofit Organizations.

Department Response: As noted earlier in this memorandum, the PHA points have been relocated to this section and the draft language has already been presented. While staff understands the arguments made for adding points for Qualified Nonprofits, the Department has made a policy decision that points will not be given for categories for which a set-aside also exists, in this case the nonprofit set-aside. This policy is being implemented consistently throughout the QAP; therefore staff recommends no changes.

Board Response: Department's response accepted.

§49.9(f)(6)--Selection Criteria--Supportive Services

Comment: Comment was received advocating for a separation of supportive services from housing provision. Receipt of services should not have to be tied to living in a particular type of housing--in particular a disabled person should not be required to live in a group home or disability-only housing to garner services. Therefore, TDHCA should put its emphasis on housing and let other agencies deal with supportive services. Other comments lent substantial support to the proposed revisions to this section for giving flexibility to applicants in their provision of supportive services and for promoting simplification. One proposal suggested an increase in the number of services that are required to get a full six points. The proposal suggested 2 points for 2 services, 4 points for 4 services or 6 points for six services. This would ensure that applicants are rewarded for their dedication to an extensive supportive service package. There was wide support for adding two other service options: senior meal program; home-delivered meal program. There was minimal opposition to the proposed language suggesting that the applicant still be required to have some sort of contract in place at the time of Application to show that the Applicant has carefully thought through the role of social services for its project and has considered the various types and costs of social service providers as part of its overall plan. It was also noted that the LURA should be flexible as to the identification of the social services to be provided so that they can change over time if necessary to meet the needs of the tenants.

Department Response: While the Department acknowledges the challenges faced by the disability community in separating housing from services, staff would like to emphasize that the supportive service packages for the LIHTC Program are entirely voluntary to tenants. There is no requirement that tenants must ever participate in the supportive services; they are merely there

as an added value to tenants if they desire to participate. Staff appreciates the suggestion to increase the services that should be associated with each number of points, however for 2003 staff recommends leaving the points as drafted to "test" it prior to adjusting points. The two service options suggested were added to the list. This exhibit, as revised, was crafted specifically to provide flexibility to the development (and in the LURA) and to allow the services to be customized for the residents in the development over time. In addition we understand that many non-profits are unwilling or unable to commit services to a development for the affordability period or that owners may want to replace their service provider. Staff feels that a contract would limit this flexibility. Staff will ensure that the LURA contains language that allows the flexibility to change the mix of services offered to the residents.

(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; youth programs; scholastic tutoring; social events and activities; senior meal program; home-delivered meal program; community gardens or computer facilities; 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 any other services approved in writing by the Department."

Board Response: Department's response accepted.

§49.9(f)(7)(E)--Selection Criteria--Transitional Housing

Comment: Comment was received suggesting that the Department's existing approach to transitional points, in which the Department requires that 100% of the units be transitional, needs to be improved. The Department should give points for doing 20% or 30% of a Development's units as transitional units, still accompanied by enriched supportive services. As it relates to the required "adequate additional income source and executed guarantee" it was commented that it is unlikely that a Development will have an executed guarantee, at this preliminary stage.

Department Response: The Department concurs that the transitional housing selection criteria may need to be revisited. However, staff feels that more extensive research is required to identify the implications of changes and consider the approach that other states are taking on this issue with the intention of making a recommendation for the 2004 QAP. Clarification on the guarantee was provided.

(E) adequate additional income source to supplement any anticipated operating and funding gaps (15 points)."

Board Response: Department's response accepted.

§49.9(f)(8)(A)--Selection Criteria--Low Income Targeting (Type A)

Comment: There was substantial opposition to this exhibit and it was suggested that it should be deleted because it would be difficult, costly, and labor-intensive to monitor and is duplicative of the goal of §49.9(f)(8)(B), which references the other low income targeting exhibit. It was also suggested that these points will shift the competitive advantage to larger cities that have higher rent limits and lower building costs. Opposition also suggested that by rewarding developments that lower rents under the maximums, the Department is creating a need for more credits and thereby undermining the goal of allocating no more credits than are needed. Conversely, comment strongly supported the concept behind this exhibit. It was requested that clarification be provided as to whether the "maximum tax credit rents" only refer to the 60% rents, or the maximum rent for each specific level of AMGI (30%, 40%, 50% and 60%). It was also suggested that the exhibit be expanded to make a downward adjustment to points for areas where the median income is above the state median income to reduce the rent burden, increase the number of households to qualify and provide point balance so that areas with higher area median incomes are not given too much advantage. Another comment asked for clarification as to whether the referenced rent levels were intended to apply during the Compliance Period and the Extended Use Period in the same manner as described in §49.9(f)(8)(B).

Department Response: Staff feels that this exhibit allows for an innovative approach to providing affordable housing; in large metropolitan areas where maximum tax credit rents can still be somewhat expensive, this exhibit finds a way to make those rents just a little bit lower. Staff does not feel that this exhibit is duplicative, but rather an alternative solution, and does not recommend adjusting the points. Staff also foresees that this exhibit may assist smaller communities that fall within a metropolitan area that, because of market rents, are unable to reach the maximum tax credit rents for their metropolitan area. They would already be setting their rents at some percentage below the maximum tax credit rents and would therefore be eligible for these points. Clarification regarding the "maximum tax credit rents" and the period for which the rents apply is provided.

(A) Applicants will be eligible for points for serving tenants with rents below the maximum tax credit rents for each level of AMGI represented in the Rent Schedule (30%, 40%, 50%, 60%) for only one of the clauses listed in this subparagraph. The calculation for these points will be made based on the figures provided in the Rent Schedule submitted with the Application. All representations and commitments made will be reflected in the LURA. The Development Owner, upon making a selection for this exhibit, will maintain the Units at the selected reduced rents continuously over the compliance and extended use period as specified in the LURA. For purposes of compliance with these representations, Units rented to Section 8 voucher holders are excluded, unless the actual rent charged for such Units, as opposed to the tenant contribution, meets the requirement:

(i) All low income rents are 5% less than the maximum tax credit rents (4 points); or

(ii) All low income rents are 10% less than the maximum tax credit rents (8 points); or

(iii) All low income rents are 15% less than the maximum tax credit rents (12 points).

Board Response: The Board decided to remove the points for this item and therefore deleted this section entirely.

§49.9(f)(8)(B)--Selection Criteria--Low Income Targeting (Type B)

Comment: This exhibit warranted extensive public comment that has been categorized for simplification. A Department Response has been provided for each item.

I. Points

Comment was received indicating that the QAP gives far too many points for low income targeting at 30% and 40% of AMGI. The points should be reduced due to lack of available sources for soft funds and because the exhibit is unfairly biased towards larger cities with higher area median incomes. Comment also suggested that smaller size developments will have more difficulty serving the lower levels of AMGI and will not be able to compete under this formula because smaller developments have a higher per unit operating cost because of limited economies of scale. Smaller developments should be favored to complement the department's efforts to minimize concentration, therefore, it is recommended that more points be given for small developments or that small projects have a higher scale for the weighting number in the formula. Finally, the National Association of Home Builders has indicated their support of adjusting weighting by AMGI level, as proposed in the draft, to address the inequities of doing deep targeting in poorer communities, although they also feel that there is a conflict--by giving more points to the poorer areas we are concentrating in the poorest areas.

Department Response: Staff supports reducing the points for this exhibit as this QAP goes out for a "test run" and to minimize any potential negative impacts on rural areas and/or small developments, although it still supports keeping the two weighting categories. Emphasis was also added in the table that for purposes of calculations in this table low income units refers only to the "targeted" units in this exhibit and does not include units at 60% of AMGI.

Board Response: Department's response accepted, with clarification that for purposes of calculations in this table low income units actually do need to include units at 60% of AMGI.

II. Set Aside Caps

Comment strongly supported lowering the cap placed on the percentage of units that can be set aside for purposes of earning points as this further concentrates poorer families. It was suggested that instead of saying, as currently drafted, that no more than 50% of the total low income units can be set aside at 40% of AMGI or lower, it should be adjusted to say that no more than 50% of the low income units can be set aside at 50% of AMGI or lower. There were similar suggested caps for 40% of AMGI, suggesting that the number of units at 40% of AMGI or lower should be capped at either 30%, 20% or 10% of the low income units. Caps were also suggested for 30% of AMGI suggesting that the number of units at 30% of AMGI be capped at either 20% or 10% of the low income units. An alternative suggestion was to eliminate the 40% AMGI level and allow the 30% units to go up to 20% of total units.

It was emphasized by several commenters that by limiting the percentages of units that can be set aside for varying levels of AMGI for developments in QCTs, those developments are prevented from having the ability to achieve the same level of points as non-QCT developments. Therefore, developers are incentivized to not develop in a QCT, a direct conflict with §42(m) of the Internal Revenue Code which requires that a preference be given to developments in QCTs. Conversely one comment was made supporting the limitation of percentages of units set aside for low income targeting in QCTs because it emphasized deconcentration in those areas that already have high concentrations of poverty. It was requested that the limitation also be applied to Difficult Development Areas (DDAs) and Targeted Texas Counties (TTCs) to again de-emphasize putting lower income units in areas of high poverty concentrations.

Department Response: The Department agrees that a revision to the caps is warranted. Based on the variety of public comment, staff suggests the following revision. Emphasis was added that for purposes of calculating this exhibit low income units refers only to the "targeted" units in this exhibit and does not include units at 60% of AMGI. Staff agrees that singling out QCTs may be perceived as a violation of §42 of the Internal Revenue Code and therefore recommends that the QCT reference be removed and developments in QCTs be treated as all other applicants are treated for this exhibit.

No more than 50% of the total number of low income units (including Units at 60% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50%, 40% and 30% AMGI categories. No more than 30% of the total number of low income targeted units will be counted as designated for tenants at or below 40% of the AMGI for purposes of determining the points in the 40% and 30% AMGI categories. No more than 20% of the total number of low income targeted units will be counted as designated for tenants at or below 30% of the AMGI for purposes of determining the points in the 30% AMGI category. For purposes of calculating "Total Low Income Targeted Units" for this exhibit, Units at 60% of AMGI are not considered.

Board Response: Department's response accepted.

III. Deferred Developer Fee

Comment also suggested that the limitation on the deferred developer fee not exceeding 50% of the total developer fee should be reinstated to reduce the riskiness of the developments. Conversely, there was comment that greater points should be given for developers willing to defer their fee to provide the deeper subsidy. Another comment indicated that without additional soft sources of capital to support the lower levels of AMGI, too much pressure is placed on deferred developer fees. Syndicators will not invest in properties that have more than 80% of developer fees deferred. The market of finding an investor for the harder-to-place deals is disappearing.

Department Response: The Department is aware of the concerns relating to deferred developer fee, but continues to feel that the scoring component of application review should be divorced entirely from the review for financial feasibility. The concerns mentioned will be evaluated during the underwriting of the development and each development will be appraised on a case by case basis. No change is suggested.

Board Response: Department's response accepted.

IV. Subsidy Comments

Finally, there was substantial comment on the subsidy requirement for this exhibit particularly supporting the removal of the subsidy requirement. It was suggested that since serving families at 30% is purely a financial decision (and the deal either works or it doesn't) that the subsidy requirement should be deleted; the market should dictate whether an applicant can qualify for 30% units and awarding points should be based on serving those families, not on getting a subsidy that for some applicants may be unnecessary. Other comments on the subsidy, which indicate a level of concern over its inclusion in the QAP, included: tenant based Section 8 contracts should qualify as a subsidy; it is unclear as to what needs to be in the letter of commitment; PHAs indicated that to reach the income levels that PHAs must serve they often designate some of their units as "public housing units" and provide a federally-funded

subsidy to the Owner to cover the operating deficits; the subsidy is technically coming from a Related Party to the development and it is requested that this language be changed.

Comment supported allowing applicants until Carryover to demonstrate a commitment from other funding sources as currently drafted. By waiting until after the credits have been committed by the department, this strengthens the applicants appeal to other funders. The Department needs to tell the amount needed to be considered a subsidy. Several comments supported that the subsidy must come from an entity that is financially capable of providing the subsidy as proven by financial statements with liquidity to perform on the commitment. The department must adequately answer the question of what will happen if the subsidy fails to materialize--they suggest that the credits be returned to the state for reallocation if at the time of final award of credits the subsidy has not materialized. Subsidy should be required by the Board meting where they vote, not at carryover.

In summary, because of these many unanswered questions, the simplest approach is to remove the requirement for subsidy for the 30% Units. The Department should simply look at the entire financial package and should not treat a Development differently because it has 30% Units (as opposed to 40% Units or other rent-restricted Units). If the numbers work, the Development is feasible. If the numbers do not work, the Development is not feasible.

Department Response: Staff strongly concurs with the suggestion that the subsidy does not need to be directly tied to this exhibit. In 2002 this requirement was added at the last minute to address concerns that legislative requirements were not being met. However staff feels that the legislation is still being met without the subsidy requirement in this exhibit and therefore is proposing the removal of the requirement. The legislative requirement at §2306.6710(b)(1)(G), to give points for the commitment of funds to better enable developments to serve lower income families, has been alternatively integrated into the exhibit relating to other funding sources (HOPE VI, Section 202, Section 811, etc.) which has been expanded to include other suggested funding sources including Community Development Block Grants, project-based Section 8 vouchers from HUD, and HOME awards.

§49.9(f)(9)--Selection Criteria--Length of Affordability

Comment: There was comment supporting the deletion of this exhibit and much more extensive support for only giving points for extending the affordability for an additional 10 years. Reasons include that there is no program in place to deal with funding renovations of older tax credit developments and this section forces applicants to select one of these options to remain competitive. To extend the restrictive nature of the development over its useful life without any funding source of a major renovation is not in the best interest of the state of Texas. The community demographics may change over a 50-year period and the restrictions would force the communities to maintain an obsolete development rather than replacing it with a more useful purpose. Clarifying introductory language was also suggested that more accurately referenced the extended use period and affordability periods. When this language was originally inserted in the QAP in 2002, it caused concern among the syndicators who anticipate exiting the deals at the end of the federal compliance period. These concerns can be addressed with improved language, while still meeting the goals of the Department to have long-term affordability.

Department Response: The Department concurs with adjusting the language to reflect shorter time periods while still encouraging developments to serve low income tenants for the longest time feasible. Staff also recommends implementing the clarifying revisions. The exhibit is shown redrafted and as deleted.

"(9) Length of Affordability Period. In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Applicants 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 (8 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (12 points)."

Board Response: Department's response accepted.

§49.9(f)(11)--Selection Criteria--Pre-Application Points

Comment: Broad support was received supporting the drafted changes to the pre-application process including the reduction of points and the reduced level of staff review. One comment suggested returning the pre-application points to the 2002 level of 15 points because the reduction to 7 points means that applicants will look at their competition and then restructure their own application to jump ahead of their competition. A developer may forego the 7 pre-application points knowing that he can make up for the deficit in other areas that the competitor has already researched. One other comment also agreed that 7 points was too low, but thought that 10 points was a more appropriate middle ground because the 7 points can be too easily overcome in other point categories. The foresight, cost and effort necessary to submit a pre-application warrants 10 points. One comment suggested that instead of allowing a 5% variance in score to retain the pre-application points, that this should be increased to 10% because a 5% variance is very small when looking at total scores that may go down.

Department Response: The Department feels that the current draft reflects an acceptable balance of points and pre-application requirements. Staff also feels that the 5% variance is more than sufficient. No changes are proposed.

Board Response: Department's response accepted.

§49.9(f)(12)--Selection Criteria--Extension Penalty Points

Comment: Several comments indicated that the QAP needs to clarify that if an extension is not used, and the original deadline is met, that no points will be deducted. The QAP now requires Development Owners to apply for extensions earlier than in the past. This will make it difficult for a Development Owner to project whether an extension will really be needed, particularly for the construction loan closing deadline when the financing is being negotiated and finalized. Conservative Development Owners are therefore put in a position of requesting an extension whether it will be needed or not, just in case some glitch arises at the last minute. If the Department is going to require extension requests to be filed earlier, then the QAP should have a provision whereby the Development Owner will not lose points if the extension is not used or is withdrawn before approved by the Board. Another comment suggested deleting this section because there are many legitimate reasons for extensions. The fee is penalty

enough. A separate comment suggested that first-time extensions be exempt from the two point deduction penalty. In addition, the language of this section can be clarified with respect to the parties to whom it applies. We recommend the language read: "Penalties will be imposed on an Applicant if the Applicant or any of its Affiliates have requested extensions..."

Department Response: Staff has proposed adding the clarifying language regarding what parties are affected, as well as on "unused" extensions. To address the comment suggesting deletion, and allowing a "freebie" extension, it should be noted that this selection criteria is required under §2306.6710(b)(2) of Texas Government Code.

(12) Point Reductions. Penalties will be imposed on an Applicant if the Applicant or any of its Affiliates who have requested extensions of Department deadlines, and did not meet the original submission deadlines, relating to developments receiving a housing tax credit commitment made in the application round preceding the current round. Applicants or Affiliates having filed an extension, but met the original deadline as required, will not have points deducted. Extensions that will receive penalties include all types of extensions identified in §49.21 of this title, received on or before the close of Application Acceptance Period, including Developments whose extensions were authorized by the Board. For each extension request made, the Applicant will be required to pay a $2,500 extension fee as provided in §49.21(j) of this title and receive a 2 point deduction.

Board Response: Department's response accepted.

§49.9(g)--Evaluation Factors

Comment: There was broad support for the geographic dispersion factor having been added so that within a region not all funds will go to the large metropolitan areas. Support was also voiced for adding "location in a QCT" to the evaluation factors. Other comment suggested that paragraph (2) should be removed because developments already receive points for longer affordability periods making this evaluation factor redundant. It was suggested that paragraph (7) be removed as it is too subjective and that paragraph (6) be made a higher priority for the Department to avoid concentration of low-income units.

Department Response: Staff concurs that paragraph (2) is redundant with selection criteria and suggests its removal and that paragraph (7) is too subjective to adequately implement. Staff also agrees that paragraph (6) should be placed higher on the list.

(1) to serve a greater number of lower income families for fewer credits;

(2) to ensure geographic dispersion within each Uniform State Service Region;

(3) to ensure the Development's consistency with local needs or its impact as part of a revitalization or preservation plan;

(4) to ensure the allocation of credits among as many different entities as practicable without diminishing the quality of the housing that is built as required under the Texas General Appropriations Act applicable to the Department;

(5) to give preference to a Development which is located in a QCT or a Difficult Development Area as specifically designated by the Secretary of HUD, and which also contributes to a concerted community revitalization plan; and

(6) to provide integrated, affordable accessible housing for individuals and families with different levels of income.

Board Response: Department's response accepted.

§49.10(c)--Forward Commitment

Comment: Concern was voiced over the elimination of the 15% target for forward commitments; by removing the 15% figure the public is given no guideline as to how much of the following year's credits the board might commit. There was concern that the board may commit too much and that to prevent the board from allocating as much as 50% of the following year's credits, the QAP should clearly state how much of the 2004 credits will be forward allocated. Concern was also voiced that the term "compelling housing need" is not an acceptable reason for the board to allocate forward commitments and that Senate Bill 322 requires the Board to allocation all credits based on the selection criteria and standards outlined in the bill. The QAP needs to clearly identify what criteria the board will use and they should not be subjective. Alternative comment suggested that the Board allocate forward commitments to worthy developments in rural areas with high need that could not score competitively. It was also suggested that the QAP state that ORCA is required to make final approval of the commitments before the TDHCA Board can award the credits. There was also support that a portion, if not all, of the forward commitments should be subjective and at the discretion of the Executive Director and the Board to allow for some applications that don't score well, but have merit for compelling social reasons, to benefit from an allocation. There was also support for doing away with the 15% expectation of forward commitments. Eliminating the cap may not be right way though because it may pressure the board to exceed 15%. Support it being lowered to 10% in 2003 and 5% in 2004. There was support for using forward commitments for RHS developments.

Department Response: Staff recommends that the 15% figure not be reinstated as it sets an expectation that at least 15% of the 2004 credit ceiling will be allocated in 2003. The board should also be given discretion in allocating the forward commitments. No changes are proposed.

Board Response: Department's response accepted.

§49.11--Pre-Application Submission Log

Comment: Comment indicated that this section does not make reference to the posting of pre-application scores on the pre-application submission log as indicated in §49.8(d).

Department Response: Section 49.11(a) of the draft QAP already specifically refers to the posting of the Pre-Application Submission Log. No changes are proposed.

Board Response: Department's response accepted.

§49.12(a)--Deadlines for 4% Credit Applications for Tax Exempt Bond Financed Developments

Comment: Comment was received requesting that deadlines for Department-issued bond transactions be extended to be the same as local-issuer transaction deadlines. The bond deadline is too short and there needs to be consistency among the dates. Also subsection (a)(3) does not account for the scenario of a waiting list bond development for which TDHCA is not the issuer--this issue needs to be addressed.

Department Response: Revisions had been made to this section to try to improve internal administrative processing. However, staff concedes that the deadlines given are difficult to meet

for applicants. Revisions are proposed to accommodate public comment.

(a) Filing of Applications for Tax Exempt Bond Financed 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 2003 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 60 days after the date of the TBRB lottery. Such filing must be accompanied by the Application fee described in §49.21 of this title.

(2) Applicants which receive advance notice of a Program Year 2003 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 of the Application and the Application fee described in §49.21 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Any outstanding documentation required under this section must be submitted to the Department at least 45 days prior to the Board meeting at which the decision to issue a Determination Notice would be made.

Board Response: Department's response accepted.

§49.12(c)--Supportive Services for Tax Exempt Bond Financed Developments

Comment: Comment suggested that the LURA should be flexible as to the identification of the social services to be provided so that they can change over time if necessary to meet the needs of the tenants.

Department Response: Staff concurs that the LURA should be flexible, although this is not a change for the QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.12(d)--Financial Feasibility Evaluation for Tax Exempt Bond Financed Developments

Comment: Broad support was voiced for the 2002 and 2003 QAP language that gives the ability to increase credits for 4% bond developments. Comment also suggested a revision to the language to reflect that an increase in tax credits is actually based on an increase in Eligible Basis.

Department Response: Revision is proposed regarding clarification of Eligible Basis language.

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 deemed that causes for the increased Eligible Basis were beyond the control of the Development Owner, were not foreseeable by the Development Owner at the time of Application and were not preventable during the construction of the Development, as determined by the Board.

Board Response: Department's response accepted.

§49.13(a)(6)--Commitment and Determination Notices

Comment: Broad Support was voiced for the proposed change requiring a second material noncompliance evaluation at commitment. One comment suggesting deleting this additional review because developers have already spent quite a bit of money by this point. Instead the offenders should be pinpointed so that corrective action can be taken. It was also stated that the dates of June 30, 2003 and May 15, 2003 do not work for Tax Exempt Bond Developments that receive allocations throughout the year.

Department Response: Revision regarding dates for applicability of Tax Exempt Bond Developments are proposed.

(6) A Commitment or Determination Notice shall not be issued with respect to any Applicant or any Person, General Partner, general contractor and their respective principals or Affiliates active in the ownership or control of other low income rental housing property in the state of Texas funded by the Department, or outside the state of Texas, that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property as of June 30, 2003 (or for Tax Exempt Bond Development as of 10 business days prior to the Board's vote to allocate credits). Any corrective action documentation affecting the Material Non-Compliance status score for Applicants must be received by the Department no later than May 15, 2003 (or for Tax Exempt Bond Developments must be received no later than 20 business days prior to the Board's vote to allocate credits).

Board Response: Department's response accepted.

§49.14(b)--10% Test

Comment: Support was given to the draft 2003 QAPs utilization of the "6-month" rule as it will save owners money.

Department Response: No changes are proposed.

Board Response: Department's response accepted.

§49.15(a)--Closing of the Construction Loan

Comment: Comment suggested that over the years, there have been numerous questions as to the documentation required to be provided to evidence construction loan closing and the manner in which the Department reviews the documentation. Currently, the documentation required includes a Deed of Trust for the construction loan, a closing statement from the title company showing a loan has been "opened", a copy of the partnership agreement with the syndicator, and a copy of the syndicator's site visit report. How does the Department review these documents? What is it looking for? Under what circumstances could the documents be rejected? If the Department identifies concerns with the documents, are the tax credits jeopardized?

Department Response: Staff agrees that the documentation required, and the review involved, needs to be more formally outlined. Staff intends to revise these documents, and an accompanying procedure, to address these concerns. However, because this is a procedural improvement, no changes are proposed to the QAP.

Board Response: Department's response accepted.

§49.15(b)--Commencement of Substantial Construction

Comment: Comment was received from the Department of Housing and Urban Development indicating that the August deadline of the following year for commencement of substantial construction, combined with the level of completion required by that time, may exclude 221(d)(4) insurance and other financing as there may not be enough time to obtain permanent financing. More details were provided for an exception for the 221(d)(4) program. There was extensive opposition to the new August deadline and support for retaining the November deadline used in 2002. In large cities where the permitting process takes up to 4 months, or in instances where weather may cause delays

in pouring foundations, the August date is too early. The main concern is that the Development must be completed in the timeframe required by the Code. Comment regarding what level of activity needed to be completed by November varied from 100% of slabs to only having poured the foundation on one building (because the 50% standard discriminates against developments with more buildings), to completion of underground with foundation pads in place to 10% of construction budget spent by the last Friday in November as documented by the inspecting architect. Other comment asked for clarification regarding what the minimum activity requirement for construction commencement is with regard to rehabilitation transactions.

Department Response: Based on public comment, staff recommends reverting to the November deadline used in the 2002 QAP. However, staff continues to recommend the more specific, and stringent, level of activity that is required by that date. A clause is added to address rehabilitation developments.

(b) Commencement of Substantial Construction. The Development Owner must commence and continue substantial construction activities not later than the second Friday in November of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.21 of this title. The minimum activity necessary to meet the requirement of substantial construction for new Developments will be defined as having poured foundations for at least 50% of all of the buildings in the Development. The minimum activity necessary to meet the requirement of substantial construction for rehabilitation Developments will be defined as having expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

Board Response: Department's response accepted.

§49.17(c)--General Contractor Experience

Comment: Comment noted that the department should maintain a database on experienced developers and contractors so one does not have to resubmit data each year. This will result in less storage of repetitive data for the state and be less work for the applicants.

Department Response: Staff concurs and will strive to implement such a system in the near future. No changes are proposed to the QAP.

Board Response: Department's response accepted.

§49.17(e)--Accessibility Inspections

Comment: Comment suggested that existing and future TDHCA developments should be surveyed for accessibility to ensure compliance with accessibility standards. Those developments found out of compliance should be made to correct their mistakes immediately.

Department Response: The 2003 QAP requires for all applicants awarded credits in 2003 an accessibility inspection performed by a third-party accessibility inspector prior to the issuance of IRS Forms 8609. No changes are proposed.

Board Response: Department's response accepted.

§§49.17(j), 49.18(a), and 49.18(c)--Amendments

Comment: It was noted that developments sometimes experience change after the time the Application is filed. This may be due to changes in the marketplace, changes in the law, or other matters that may be outside the control of the Development Owner. The Department has an understandable interest in reviewing and approving significant changes to a Development to ensure that the Development continues to comply with the QAP and the Department's standards. There are several sections of the QAP that address amendments and, because each is a little different, it can create some confusion. Some parts of the QAP refer to a change in the Application while others refer to a change in the Development itself. For instance: section 49.9(a) refers to an amendment to an Application pursuant to §49.18, yet, §49.18(a) refers to an alteration of the Development; §49.9(a) refers to an amendment to an Application pursuant to §49.18 after the Development has received a Commitment, yet, §49.18(a) refers to an alteration of the Development between the time the Board approves the Development and the time the Commitment Notice or Determination Notice is issued; §49.18(a) refers to an alteration of the Development during a specific time period; §49.18(c) refers to an alteration of the Development generally; §49.17(j) refers to an amendment of a Commitment Notice or Carryover Allocation or any "other requirement with respect to a Development"? Is the highlighted language intended to refer to the Application? This section is not clear about whether Board action is required.

The amendment provisions need to be reworked to be consistent and clear. It seems that amendments fall into two categories: (1) an amendment of any representations or warranties made in the Application with regard to the Development or the Development Team during the time the Application is pending before the date on which the Board grants its approval for a Commitment Notice or Determination Notice to be issued and (2) an amendment of any representations or warranties made in the Application with regard to the Development or the Development Team after the Board has granted its approval for a Commitment Notice or Determination Notice to be issued. Amendments prior to Board approval are generally prohibited, except for correction of certain deficiencies. Amendments after Board approval (which may include a change in a member of the Development Team, a change in social services, etc.) should be permitted within certain parameters, and it should be clear what kinds of amendments require Board action and what kinds of amendments can be approved at the staff level. For instance, it is not unusual for an Applicant to determine that it must create a single-asset entity that is a wholly-owned subsidiary to serve as the General Partner of the Development Owner. This kind of change in the ownership structure, provided the same parties are ultimately in control, should be permitted and should not require significant administrative procedure or time delay like Board action.

Department Response: The Department concurs that the protocols relating to amendments definitely need clarification and refinement. Staff feels that more extensive research is required to ensure that this is handled comprehensively, and with adequate input from the development community, prior to making a recommendation for the 2004 QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.18(b)--Appeals Process

Comment: Comment suggested that the applicant and the department should have an equal number of days to respond to an appeal (7 each or 14 each, but not 7 for the applicant and 14 for the Department). It was also suggested that if the applicant is unhappy with the Department response they can appeal to an independent third party arbitrator, and not the Board, whose decision will be binding. The reason for this suggestion is that the

Board has so much material to go over they may not have ample time to thoroughly review each appeal on its merits. It would also remove the board from any legal liability. Additionally comment was received clarifying the language regarding the deadline for filing appeals. Another comment asked that the appeal for scoring be expanded to include appeals for "failure to allocate tax credits based on that scoring." Department Response: The requirement and details regarding the number of days that each party has to respond to the appeal are legislated in §2306.6715 of Texas Government Code. It is also required in that citation that the Board, and not an independent third party arbitrator, be the party to hear an appeal if an applicant is displeased with the response of the executive director. Clarifying language is proposed relating to the deadline. Texas Government Code does not require the Department to allow appeals on non-allocation of credits, nor does staff suggest that appeals of that nature should be included in the appeals process.

(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.

Board Response: Department's response accepted.

§49.18(c)(3)--Amendment of Application Subsequent to Allocation by Board

Comment: Comment summarized that 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. It is suggested that the Department define "negative manner" or provide examples of negative material alterations. This clause also needs to address how this impacts Tax Exempt Bond Developments?

Department Response: As mentioned above, the Department concurs that the protocols relating to amendments need clarification and refinement. Staff feels that more extensive research is required to ensure that this is handled comprehensively and with adequate input from the development community prior to making a recommendation for the 2004 QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.18(c)(7)--Amendment of Application Subsequent to Allocation by Board

Comment: Is "monitor" supposed to be "underwriter"?

Department Response: The reference to "monitor" is taken directly from §2306.6712 of Texas Government Code. As mentioned above, the Department plans on revising the protocols relating to amendments need clarification and refinement and will reevaluate the use of the term "monitor." Staff feels that more extensive research is required to ensure that this is handled comprehensively and with adequate input from the development community prior to making a recommendation for the 2004 QAP. No changes are proposed.

Board Response: Department's response accepted.

§49.18(d)--Housing Tax Credit and Ownership Transfers

Comment: Some comment suggested that transfers within the first two years after completion of a project should not be permitted if the transferee would, as an application, violate the $1.6 million limitation. Otherwise this invites potential abuse. One other comment suggested that clarification be provided regarding which types of Affiliate transfers are permitted without written approval? For instance, if the Applicant and the Development Owner are not the same Persons but are Affiliates, can the Applicant transfer the allocation to the Development Owner without approval? What does this imply for changes in the ownership structure of the Development Owner itself? Can the General Partner transfer its ownership interest to an Affiliate without approval? Some clarification would be beneficial. Also note the inconsistency between the use of the word "Affiliate" versus the use of the word "Related Party" in this section. Consider requiring the Applicant to provide the name of the transferee and an organizational chart for the transferee.

Department Response: Because this section is so closely linked with definitions of Affiliate, Applicant, Development Owner and Related Party, staff suggests addressing this issue in the working group that is has suggested earlier in this memorandum to thoroughly research these terms and make recommendations for simplification and improvement for the 2004 QAP. No other changes are proposed.

Board Response: Department's response accepted.

§49.19(b)--Compliance Monitoring and Material Non Compliance--Construction Monitoring

Comment: It was suggested that instead of the applicant having to provide copies of inspection reports within 15 days automatically, the clause "upon request" should be added so that the department will not be overburdened with excess documentation on developments that they are comfortable with. A revision for clarification was proposed.

Department Response: The Department requires these reports from all parties and does not suggest that they be provided only "upon request" but automatically. The recommended clarification is proposed.

(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction or rehabilitation phase associated with any Development under this title. The Department will monitor under this requirement by requiring a copy of reports from all construction inspections performed for the lender and/or syndicator for the Development.

Board Response: Department's response accepted.

§49.19(e)--Compliance Monitoring and Material Non Compliance--Database

Comment: This language does not specify who should have access to the database.

Department Response: The database is intended to be easily accessible to the employees who regularly access the compliance and development records in their daily duties. No change is proposed.

Board Response: Department's response accepted.

§49.19(g)--Compliance Monitoring and Material Non Compliance--Financials

Comment: The March 1 delivery date of copies of certified audits is too early. Most syndicators require tax returns by March 1 and

the certified audit by the end of March. The requirement should be by the end of April (or later) to allow for delays or other issues such as the issuance of 8609s.

Department Response: The owner certification of compliance, which is referred to as the Housing Sponsor Report in §2306 of Texas Government Code, is required to be submitted by March 1 of each year. Section 2306 does not address the audited financial reports, therefore it is reasonable to allow a later submission. Staff proposes a new deadline.

(g) The Development Owner will deliver to the Department no later than the last day in April each year, the current audited financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Development for the prior year."

Board Response: Department's response accepted.

§49.19(h)--Compliance Monitoring and Material Non Compliance--Prohibitions

Comment: Comment was received that the sanctions of this section are too severe for an individual or minimal infraction. Rather than being absolute in the penalty, it should be subject to the departments ruling. For such a severe penalty, the infraction needs to be continuous and without audit procedure to stop or attempt to prevent. With field managers and assistants unintentional slips can occur. The opening paragraph of §49.19(h) sets forth a list of things that a Development may not do. Paragraphs (1) and (2) clearly state prohibitions; however, paragraphs (3), (4), and (5) do not. It is clear that is not the intention of the Department, as paragraph (3) would then prohibit posting Fair Housing logos. This section should be restructured. Department Response: The Department feels that the sanctions are appropriate. The section is "restructured" in the draft QAP only as it relates to the numbering of the exhibits. No language change is proposed.

Board Response: Department's response accepted.

§49.19(h)(5)--Compliance Monitoring and Material Non Compliance--Section 8 communication

Comment: Subparagraphs (A) and (B) are somewhat unclear as it relates to the material noncompliance score. Comment indicated that a harsh penalty may be excessive.

Department Response: Clarification was added referring each section back to the Material Non-Compliance points section. The Department feels that the harshness of the penalties is appropriate for the violation. An advocacy working group was established and worked together to generate a policy regarding this issue.

(A) Failure to lease to a prospective tenant due to the applicant's status as a recipient of a federal rental assistance voucher or certificate will result in a material non-compliance score as more fully described in subsection (s) of this section.

(B) A complaint of exclusion from admittance as described in subsection (h)(5) of this section that has been verified by the Department shall result in a non-compliance score as more fully described in subsection (s) of this section for a period of one year from the date of the Department's verification of the complaint.

Board Response: Department's response accepted.

§49.19(j)(1)(M)--Compliance Monitoring and Material Non Compliance--Nontransient Units

Comment: Subparagraph (M) appears to restate subparagraph (E).

Department Response: This was an error. Staff recommends revising subparagraph (E) as shown and deleting subparagraph (M).

(E) 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 the Code, §42(i)(3)(B)(iii) and (iv));

Board Response: Department's response accepted.

§49.19(n)--Compliance Monitoring and Material Non Compliance--Notices to Owners

Comment: This language should be clarified as to whether it means an additional six months or six months in the aggregate.

Department Response: This section pertains to the correction period that is allowed by §42. The Department is required to give notice to an owner if any non-compliance is identified. The notice must provide the owner with a correction period. The correction period is not to exceed 90 days from the date of the notice to the owner, however the Department may extend the correction period up to 6 months (from the date of the notification or monitoring letter) with good cause. Any extensions granted by the Department are date specific. Changes are proposed for clarification.

The notice will specify a correction period which will not exceed 90 days from the date of notice to the Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months from the date of notice to the Owner if it determines there is good cause for granting an extension.

Board Response: Department's response accepted.

§49.19(s)--Compliance Monitoring and Material Non Compliance--Violations

Comment: It was requested that any violation of the Section 504 requirements be viewed as a material violation.

Department Response: Section 504 is not monitored by HUD or the Department of Justice. However any violation of the §504 threshold requirement constitutes a LURA violation. It should also be noted that the QAP now requires a third party accessibility inspection prior to the issuance of IRS Forms 8609. No changes are proposed.

Board Response: Department's response accepted.

§49.19(s)--Compliance Monitoring and Material Non Compliance

Comment: Comment suggested that points for noncompliance issues be deducted based on the performance of the partner responsible for the project. If a management company is at fault then both partners should be penalized. It was also recommend that the Department establish a scoring structure with proportionality based on the size of the applicant's portfolio--the proposed scoring structure is too subjective. There was also concern about the ambiguity of some of the language in this section. The ambiguity is especially troublesome if the Department is going to impose its scoring system on projects in other states. While they appreciate the Department's interest in establishing a uniform standard for the evaluation of non-compliance issues,

they believe using one point system for all jurisdictions could pose problems. For instance, a state may not require an Affirmative Marketing Plan in the same manner Texas does. If an Applicant is following all of the rules in the state in which its property is located, it should not be punished in Texas. Another consideration is that other states may not maintain data on some of the compliance standards established by the Department, which would impact the Department's ability to make its compliance calculation. Further, the commenter noted their concern about the subjectivity granted to the Department in this section. While they recognize that the Department requires a level of subjectivity in order to declare a property or a property owner not in compliance, a significant amount of subjectivity may create more problems than it solves. Suggested revision regarding the wording of the entities being reviewed was provided.

Department Response: Staff concurs with these comments and the Department is working towards a scoring system based on proportionality of the portfolio. Staff hopes to integrate this item into the working group for the 2004 QAP mentioned earlier in this memorandum. As it relates to the information received from other states, the Department only evaluates what other states report. They are not going to report violations that are not on their "radar" such as an affirmative marketing plan. The Department will evaluate only those items reported and apply its scoring methodology; only the most egregious non-compliance will become evident. Suggested revision regarding the entities is proposed.

(s) Material Non-Compliance. In accordance with §49.5(b)(6) and (7) of this title, the Department will disqualify an Application for funding if the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other low income rental housing properties located in or outside the State of Texas is determined by the Department to be in Material Non-Compliance on the date the Application Round closes.

§49.19(s)(1)--Compliance Monitoring and Material Non Compliance

Comment: The use of the term "allocation" in the first sentence is a bit unclear. The Department scores a Development and then determines whether it receives an allocation. Some Developments that are scored do not receive allocations.

Department Response: The Department only evaluates, and scores, properties that already have an allocation. The Department does not evaluate the property proposed in the application. No change is proposed.

Board Response: Department's response accepted.

§49.19(s)(4)--Compliance Monitoring and Material Non Compliance

Comment: If the scoring system goes into effect on April 1, 2003, what scores are used in the meantime, particularly if non-compliance issues must be addressed prior to February 1, 2003? Comment suggested that this reference should be deleted because the structure needs to be created and then left alone so that developers making business decisions several years prior are not penalized.

Department Response: The Department concurs that the April 1 deadline may lead to confusion because it is unclear what standard applies prior to April 2. For simplicity, this section is revised. "Multiple occurrences of these types of non-compliance events may produce enough points to cause the property to be in Material Non-Compliance. For purposes of these scores, the terms "uncorrected" and "corrected" refer to actions taken subsequent to notification of non-compliance by the Department.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(i)--Compliance Monitoring and Material Non Compliance

Comment: This appears to allow the Department to use its discretion in deciding if a Development has health, safety, or building code violations. This may be too subjective and open the Department to criticism. At a minimum, this should be tied to the receipt of a code violation notice from an appropriate governmental entity, like the city.

Department Response: Sectoin 42 establishes the inspections standards. The Department utilizes these inspection standards, therefore a government entity would report a violation or there would be violations reported under the UPIS inspection. The Department relies on violations identified under either of these inspection standards. No changes are proposed.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(iii)--Compliance Monitoring and Material Non Compliance

Comment: Who makes this "Determination of violation under the Fair Housing Act"? This should be tied to a final determination by a court of competent jurisdiction, or other appropriate body.

Department Response: HUD or the Department of Justice issues a determination of a violation under the Fair Housing Act after the investigation determines an actual violation of the Fair Housing Act. Under an MOU between HUD, DOJ and the U.S. Department of Treasury, the Department is required to notify the IRS via the IRS form 8823 of the violation.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(iv)--Compliance Monitoring and Material Non Compliance

Comment: "Development is out of compliance and never expected to comply." What does this mean? Out of compliance with what? Who determines this? Again, this is a subjective standard that could open the Department to criticism. If the objective standards are drafted carefully and strictly enough, you probably do not need this provision anyway because the event of non-compliance can be captured by another category.

Department Response: There is a violation on the IRS Form 8823 that allows the Department to report owners that are no longer in compliance with the program. Any owners reported under this category have reported to us that they are no longer claiming credits and will not comply with the program. This is an item of last resort; we encourage compliance and do not want the units removed from inventory.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(vi)--Compliance Monitoring and Material Non Compliance

Comment: Clarify that this applies only to properties that have received an allocation of tax credits in the non-profit set aside.

Department Response: Staff concurs with the proposed revision.

(vi) No evidence or failure to certify to non-profit material participation for Owner having received an allocation from the Nonprofit Set-Aside. Uncorrected is 10 points. Corrected is 3 points.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(ix) and (x)--Compliance Monitoring and Material Non Compliance

Comment: The meaning is a bit unclear. Does an error in renting to just one person who is underage, or who does not have special needs, trigger this? Department Response: Applicants need to be adhering to this requirement. A violation of this requirement is essentially a violation of the Fair Housing Act. Not meeting the set aside and not documenting marketing efforts to meet the set aside triggers the non-compliance. The Department feels that this is clear enough for monitoring purposes.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(xii)--Compliance Monitoring and Material Non Compliance Comment: It seems that a change in eligible basis should not trigger a non-compliance event if the minimum set aside continues to be met and the project is renting to income qualified people. Although there would be a loss of tax credits, the syndicator will adequately punish the Development Owner for that infraction. Who determines whether there has been a change in eligible basis? Is it based upon an IRS audit? Is this applicable only after the Forms 8609 are issued?

Department Response: Changes in eligible basis can include common areas becoming commercial space, a fee charged for a tenant facility formerly provided without charge, or receipt of a federal grant. Changes in the qualified basis are reported under "household over the income limit upon initial move in" or "failure to document" on the IRS Form 8823. The determination is based on these issues upon inspection and the determination is only made after IRS Forms 8609 have been issued.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(xv) and (xvi)--Compliance Monitoring and Material Non Compliance

Comment: Clarify that the penalty is applied for failure to pay fees on time in accordance with any applicable deadlines.

Department Response: This requirement is directly from the IRS Form 8823 referring to "only if past due." No changes are proposed.

Board Response: Department's response accepted.

§49.19(s)(4)(A)(xx)--Compliance Monitoring and Material Non Compliance

Comment: Again, this language creates significant subjectivity for the Department, which could subject the Department to criticism. What is a "pattern" of violations and who makes this determination?

Department Response: The Department makes the determination and determines what the "pattern" is. Again, this requirement is straight from the IRS Form 8823. These determinations are not made lightly. No changes are proposed.

Board Response: Department's response accepted.

§49.19(s)(4)(B)(i)--Compliance Monitoring and Material Non Compliance

Comment: We need to ensure that any points given under this category are not redundant with points given under §49.19(s)(4)(A).

Department Response: The Department affirms that no points are given under both Development and Unit violations and the Compliance Division is vigilant about ensuring that this does not occur.

Board Response: Department's response accepted.

§49.19(s)(4)(B)(x)--Compliance Monitoring and Material Non Compliance

Comment: This should exclude Units that are unavailable because of casualty, as well as manager-occupied Units.

Department Response: It does exclude those instances. Clarification is provided.

(x) 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.

Board Response: Department's response accepted.

§49.20(a)(1)--Department Records

Comment: Comment suggested adding that ORCA also be required to maintain tax credit program records as they complete them for the rural set-aside. "Reservation notice" is not used elsewhere in the QAP. Should "Commitment Notice" be used here?

Department Response: The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. Upon further review, staff identified that paragraph (1) regarding reservation notices and paragraph (2) regarding commitment notices are identical. Staff recommends the removal of paragraph (1) to eliminate redundancy.

Board Response: Department's response accepted.

§49.20(b)(1)--Application Log

Comment: Amend by adding that ORCA also be required to maintain tax credit program records as they complete them for the rural set-aside. As noted previously, the defined term "Related Party" is very broad and probably incorporates so many people that it would be infeasible for the Department to carry all of those names on a log. Perhaps the QAP can, once again, refer to the Development Owner's organizational chart and include on the log the name of the Development Owner and all Persons Controlling the Development Owner in accordance with the organizational chart.

Department Response: The Department and ORCA are in the process of executing a Memorandum of Understanding that will identify the role of ORCA in the administration of the rural set-aside. That document is independent of the Qualified Allocation Plan but will address the involvement of ORCA in the allocation process. Clarification provided.

(1) the names of the Applicant and all Persons with an ownership interest in the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

Board Response: Department's response accepted.

§49.21(b) and (c)--Pre-Application Fee and Application Fee

Comment: As it relates to the CHDO discount, language should be clarified to indicate that the discount is for Applications in which a CHDO or nonprofit intends to serve as the managing General Partner of the Development Owner or Control the managing General Partner of the Development Owner.

Department Response: Proposed clarification is provided. "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.

"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."

Board Response: Department's response accepted.

§49.21(h)--Building Inspection Fee

Comment: Comment supported the department utilizing inspections performed by the construction lenders and syndicators and the associated fee. One comment supported deleting the fee because the inspections are a duplication of effort.

Department Response: The inspection fee was dramatically reduced and now represents only a processing fee for the Department's administrative expenses related to the oversight of the construction inspection process (gathering and reviewing the reports from lenders and syndicators). No change is proposed.

Board Response: Department's response accepted.

§49.21(k)--Extension Requests

Comment: There was broad support for the proposed change on timing.

Department Response: No changes are proposed.

Board Response: Department's response accepted.

§49.22(b)--Manner and Place of Filing All Required Documentation

Comment: As you know, Applicants often use e-mail to communicate with Department staff. Documents can be attached to e-mail to respond to requests for more information and such. Is it possible to include e-mail communication in this section?

Department Response: The Department makes an effort to communicate by e-mail in day-to-day correspondence, however staff prefers that formal filings of documentation are not handled through e-mail, but more formally submitted as described in this section.

Board Response: Department's response accepted.

SUMMARY OF NON-SUBSTANTIVE CHANGES TO THE QAP

From public comment, and staff review, grammatical and typographical errors were identified. Correction of these items was made to ensure that the document is as complete and accurate as possible. These corrections appear in the revised QAP that accompanies this memorandum.

§49.14(a)--Carryover

Department Comment: For accuracy the clause "approved by the Board" was removed because Carryover extensions are not approved by the Board, but are approved administratively by the Department.

Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline.

Board Response: Department's response accepted.

GENERAL TAX CREDIT COMMENTS NOT RELATED SPECIFICALLY TO THE QAP

Regional Allocation Formula

Comment: The 13 regions should be used but the formula for calculating the allocation should be based purely on a per capita basis as in prior years. There should be no adjustment for prior awards. Other comment received indicated that population size and the AMI should also be considered in the calculation of the regional allocation formula. The larger the population, combined with the lowest AMI, should be given a greater amount of weight in the factors that make up the regional allocation formula. It was recommended that for allocating credits, a two-tier allocation system be created for regions that have the larger Metropolitan Statistical Areas (MSAs) such as Dallas, Austin and Houston (Regions 3, 6 and 7), so that smaller counties that share a region with dominating MSAs are not penalized and unable to receive credits.

Department Response: The comment submitted will be provided to the Housing Resource Center as they make revisions to the regional allocation formula.

Board Response: Department's response accepted.

Fair Housing Act

Comment: While the QAP addresses accessibility and discrimination for tenants, it does not address TDHCA's position regarding discrimination against developments by local municipalities. Discrimination from local municipalities, even for properly zoned properties, have been manifested by the denial of letters of support, or outright opposition, based solely on the fact that the proposed developments will serve low income residents. TDHCA should only consider comments from local municipalities, elected officials, neighborhood groups and private citizens that focus on the health and safety issues raised by a proposed development.

Department Response: The Department does not have the authority to limit the nature of public comment submitted to the Department regarding proposed developments. While staff and the Board evaluate comments on a case-by-case basis, the Board of TDHCA has set a strong precedent for not letting NIMBYism prevent an allocation of credits. Decisions tend to be derived, as suggested, on the comments that relate to health and safety issues.

Board Response: Department's response accepted.

Deferred Developer Fee Cap

Comment: Comment was received that either the QAP or the Underwriting Guidelines need to reinstate the 2002 rule that precludes an applicant from deferring more than 50% of the developer fee, although it is suggested that it be added into threshold and not be associated with any particular set of points. The rationale is that once an applicant defers more than 50% of the

developer fee, the transaction becomes riskier and may not be bought by the equity community. This would cause credits to be returned and eventually rolled into the following year, which may give the department a reputation for allocation credits to deals that fail. It was also pointed out that many applicants who don't understand the program well will defer up to 90% of their developer fee without understanding the implications or having a plan for unforeseen financial needs (interest rate increases, construction cost increases, softening of the rental market) and this will ultimately hurt the investors.

Department Response: As a feasibility issue, the 50% figure is not relevant. Underwriting will be evaluating each development on the merits of its financial feasibility on an individual basis. Further, the market provided in the equity community will drive the limit, so staff feels that it is unnecessary for TDHCA to do so.

Board Response: Department's response accepted.

Credit Cap per Unit

Comment: There was broad support for instituting a limit on credits per unit: $6,500 per unit for non-QCT developments and $8,500 (or $8,450) per unit for QCT developments.

Department Response: In the interest of ensuring adequate public input in the rulemaking process, the Department does not recommend adding a credit cap per Unit. Since it was not part of the 2002 QAP, nor part of the draft 2003 QAP, the public will not have had adequate time to respond to the suggestion. This suggestion will be considered in drafting the 2004 QAP.

Board Response: Department's response accepted.

Limitation on 9% Credit Awards in QCTs

Comment: Similar to the limitation that no more than 50% of bond allocations can be located in QCTs, it was suggested that no more than 50% of the 9% credit awards should be allocated in QCTs on a regional basis.

Department Response: In the interest of ensuring adequate public input in the rulemaking process, the Department does not recommend adding a credit cap per Unit. Since it was not part of the 2002 QAP, nor part of the draft 2003 QAP, the public will not have had adequate time to respond to the suggestion. This suggestion will be considered in drafting the 2004 QAP. It is possible that a revision such as this may be seen as a violation of §42 of the Internal Revenue Code because it may act as a disincentive to develop in a QCT and the Department is obligated to give a preference to developments located in QCTs.

Board Response: Department's response accepted.

Limit on New Developers

Comment: One comment suggested limiting new developers as to the number of projects and the size of project they can submit. No additional explanation was provided or justification.

Department Response: The Department does not feel that limits on new developers is necessary. The experience requirement must be satisfied on all applications, whether it is a new developer or not. If the applicant is able to meet the experience requirement they should be able to participate with equal standing.

Board Response: Department's response accepted.

The new sections are adopted pursuant to the authority of Chapters 2306, 2001, and 2002, Texas Government Code, V.T.C.A., and §42 of Internal Revenue Code of 1986, as amended, (26 U.S.C. §42) which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing credit allocations in the State of Texas.

Section 42 of Internal Revenue Code of 1986, as amended, (26 U.S.C. §42), provides for credits against federal income taxes for owners of qualified low income rental housing projects. That section provides for the allocation of available tax credit amount by state housing credit agencies. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan which was adopted by the governing board of the Department and submitted to the Governor in accordance with Texas Government Code §2306.6724 and is contingent upon the Governor's approval in accordance with Texas Government Code §2306.6724(c).

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-91-4 (June 17, 1991), 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 a Qualified Allocation Plan (QAP) which is set forth in §49.1 - §49.24 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.

(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 Set-Aside 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 Set-Aside. The Criteria will be approved by that Agency. To ensure that the Rural Set-Aside receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts.

§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 documents from the Application which are essential to a review and scoring of the Development. If an Application contains deficiencies which, in the determination of the Department staff, require clarification of information submitted at the time of the Application, the Department staff shall request correction of such Administrative Deficiencies. The Department staff shall provide this 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 such Administrative Deficiencies are not corrected to the satisfaction of the Department within three 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 uncorrected. If such deficiencies are not corrected within five 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.

(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.

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

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

(B) 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.

(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. For purposes hereof, the Applicant is sometimes referred to as the "housing sponsor."

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

(8) Application Acceptance Period--That period of time during which Applications for either a Housing Credit Allocation from the State Housing Credit Ceiling or a Determination Notice for Tax Exempt Bond Developments may be submitted to the Department as more fully described in §49.9(a) and §49.22 of this title.

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

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

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

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

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

(i) Sections 221(d)(3), (4) and (5), National Housing Act (12 U.S.C. Section 1715l);

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

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

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

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

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

(vii) Section 42 of the Internal Revenue Code of 1986, 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).

(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) Beneficial Owner--A "Beneficial Owner" means:

(A) Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares;

(i) voting power which includes the power to vote, or to direct the voting as any other Person or the securities thereof; and/or

(ii) investment power which includes the power to dispose, or direct the disposition of, any Person or the securities thereof.

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such Person of Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

(C) Any Person who has the right to acquire Beneficial Ownership during the Compliance Period, including but not limited to any right to acquire any such Beneficial Ownership:

(i) through the exercise of any option, warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

(D) Provided, however, that any Person who acquires a security or power specified in clauses (i), (ii) or (iii) of subparagraph (C) of this paragraph, with the purpose or effect of changing or influencing the control of any other Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

(15) Board--The governing Board of Directors of the Department.

(16) 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.

(17) Carryover Allocation Document--A document issued by the Department to a Development Owner pursuant to §49.14 of this title.

(18) 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.

(19) 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.

(20) 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 Department.

(21) 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."

(22) 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).

(23) 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 or the managing member of a limited liability company.

(24) 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 Low Income Housing Tax Credit Program.

(25) 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).

(26) Department--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established at Chapter 2306, Texas Government Code.

(27) Determination Notice--A notice issued by the Department to the 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 Development throughout the Credit Period.

(28) 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.

(29) Development--A proposed qualified low income housing Development, for new construction or rehabilitation, for purposes of 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.

(30) 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.

(31) 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.

(32) Development Team--All Persons or Affiliates thereof which play(s) a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and anyone who provides, or is anticipated to provide, a guarantee to secure equity or financing for the transaction for a fee.

(33) 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 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.

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

(35) 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.

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

(37) General Contractor--One who contracts for the construction or rehabilitation of an entire building or 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 said subcontractors. This party may also be referred to as the "contractor."

(38) General Developments--Any Development which is not a Qualified Nonprofit Development or is not under consideration in the Rural, At-Risk Development or Elderly Set-Asides as such terms are defined by the Department.

(39) 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 to the contrary, if the entity 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.

(40) General Pool--The pool of Housing Tax Credits that have been returned or recovered from prior years' allocations or the current year's Commitment Notices after the Board has made its initial commitment of the current year's available State Housing Credit Ceiling. General Pool Housing Tax Credits will be used to fund Applications on the waiting list.

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

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

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

(44) 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.

(45) Housing Credit Allocation--An allocation by the Department to a Development Owner of Housing Tax Credit in accordance with §49.17 of this title.

(46) 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 Compliance Period and allocates to the Development.

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

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

(49) Ineligible Building Types--Those buildings or facilities which are ineligible, pursuant to this QAP, for funding under the Low Income Housing Tax Credit Program 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, 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 Development with building(s) with four or more stories that does not include an elevator.

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

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

(51) 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 title and the requirements of the Code, §42.

(52) Material Deficiencies--Deficiencies that are not eligible to be remedied pursuant to paragraph (1) of this section. Deficiencies caused by the omission of Threshold Criteria documentation specifically required by §49.9(e) of this title shall automatically be considered Material Deficiencies and shall be cause for termination.

(53) Material Non-Compliance--A property located within the state of Texas will be classified by the Department as being in material non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §49.5(b)(6) of this title and under the methodology and point system set forth in §49.19 of this title. A property located outside the state of Texas will be classified by the Department as being in Material Non-compliance status if the non-compliance score for such property is equal to or exceeds 30 points in accordance with the provisions of §49.5(b)(7) of this title and under the methodology and point system set forth in §49.19 of this title.

(54) 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.

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

(56) 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 of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal.

(57) 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 ability could be improved by more suitable housing conditions, or

(B) has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

(58) 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 §49.22 of this title.

(59) 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.

(60) Principal--the term Principal is defined as Persons that will have an ownership interest in, or that will exercise Control over, a partnership, corporation, limited liability company, trust, or any other public or private entity and their Affiliates that will have an ownership interest in, or that will exercise Control over, the Applicant. In the case of:

(A) partnerships, Principals include all General Partners regardless of their percentage interest;

(B) corporations, Principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors or any equivalent governing body as well as all directors and each stock holder having a ten percent or more interest in the corporation; and

(C) limited liability companies, Principals include all members, regardless of their percentage interest.

(61) 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.

(62) 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.

(63) Qualified Allocation Plan (QAP)--A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, §42(m)(1) (specifically including preference for Developments located in Qualified Census Tracts and the development of which contributes to a concerted community revitalization plan) and as further provided in §§49.1 - 49.24 of this title, that:

(A) provides the threshold and scoring, and underwriting process based on housing priorities of the Department that are appropriate to local conditions; and

(B) gives preference in Housing Credit Allocations to Developments that, as compared to other Developments:

(i) when practicable and feasible based on available funding sources, serve the lowest income tenants; and

(ii) are affordable to qualified tenants for the longest economically feasible period; and

(C) 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.

(64) 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).

(65) 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).

(66) 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.

(67) 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 experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must be a Third Party.

(68) 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 rural developments Set-Aside, the At-Risk Development Set-Aside and the general Set-Aside.

(69) 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).

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

(71) 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 of the 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.

(B) As a note to Applicants, 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.

(72) Rules--The Department's Low Income Housing Tax Credit Rules as presented in this title.

(73) 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.

(74) Rural Development--A Development located within a Rural Area and for which the Applicant applies for tax credits under the Rural Set-Aside.

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

(76) Set-Aside--A reservation of a portion of the available Housing Tax Credits to provide financial support for specific types of housing or geographic locations or serve specific types of Applicants on a priority basis as permitted by the Qualified Allocation Plan.

(77) 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).

(78) 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."

(79) 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)(B), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(80) Third Party--a Person who is not an Affiliate, Related Party or Beneficial Owner of the Applicant, General Partner, Developer or Person(s) receiving a portion of the contractor fee.

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

(82) 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 Applicant's 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.

(83) 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.

(84) 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 separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

§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) A member of the Development Team 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) A member of the Development Team has been or is convicted of, under indictment for, or on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses; or,

(3) A member of the Development Team has been or is subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with any Governmental Entity unless such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member; or

(4) A member of the Development Team 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.

(b) Disqualification and Debarment. Additionally, the Department will disqualify an Application, or debar a Person, if it is determined by the Department that those issues identified in paragraphs (1) - (10) of this subsection exist. A Person debarred by the Department from participation in the Low Income Housing Tax Credit Program, or an Applicant whose Application has been disqualified, may appeal the debarment or disqualification to the Board. The Department shall debar a Person for the longer of, one year from the date of debarment, or until the violation causing the debarment has been remedied. Causes for disqualification and debarment include:

(1) fraudulent information, knowingly false documentation or other material misrepresentation has been provided in the Application or other information submitted to the Department. The aforementioned policy will apply at any stage of the evaluation or approval process; or,

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

(A) a member of the Board; or

(B) the executive director, the deputy executive director for programs, the deputy executive director for housing operations, the director of multifamily finance production, the director of portfolio management and compliance or the director of real estate analysis employed by the Department.

(3) the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other tax credit properties in the state of Texas who

received a commitment of tax credits in the 2001 or 2002 Application Round but did not close the construction loan, or meet the deadlines for the commencement of substantial construction as required under the Carryover Allocation (including any extension period granted by the Board) except for instances where an extension has been approved by the Board.

(4) 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,

(5) the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other tax credit properties has failed to place in service buildings or removed from service buildings for which credits were allocated (either Carryover Allocation or issuance of 8609s). The Department may consider the facts and circumstances on a case-by-case basis, including whether the credits were returned prior to the expiration date for re-issuance of the credits, in its sole determination of Applicant eligibility; or,

(6) the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other low income rental housing properties in the state of Texas funded by the Department 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 on the date the Application Round closes or upon the date of filing Volume I of the Application for a Tax Exempt Bond Development, and such Material-Noncompliance is not corrected as provided herein. Any corrective action documentation affecting the Material Non-Compliance status score for Applicant's competing in the 2003 Application Round must be received by the Department no later than February 1, 2003, and any corrective action documentation affecting the Material Non-Compliance status score for Applicants with a Tax Exempt Bond Development must be received by the Department no later than 30 days prior to the submission of Volume I. The Department may take into consideration the representations of the Applicant regarding compliance violations described in §49.9(e)(8)(C) and (D) of this title; however, the records of the Department are controlling; or,

(7) the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other low income rental housing properties outside of the state of Texas has incidence of non-compliance with the LURA or the program rules in effect for such tax credit property as reported on the Uniform Application Previous Participation Certification and/or as determined by the state regulatory authority for such state and such non-compliance is determined to be Material Non-Compliance by the Department using methodology as set forth in §49.19 of this title; or,

(8) the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other tax credit properties in the state of Texas has failed to pay in full any fees billed by the Department after the due date has passed, as further described in §49.21 of this title; or

(9) the Development is located on a site that has been determined to be "unacceptable" by the Department staff; or

(10) the Applicant or a Related Party, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of the Development, or individual employed as a lobbyist or in another capacity on behalf of the Development, communicates with any Board member or member of the Committee with respect to the Development during the period of time starting with the time an Application is submitted until the time the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application.

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

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

(2) the housing sponsor 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 housing sponsor is not financially responsible;

(4) the housing sponsor has, or will enter into a contract for the proposed Development with, a Person 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) breached a contract with a public agency; 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 multifamily finance production division and the housing sponsor.

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

(1) A former Board member or a former executive director, deputy executive director for programs, deputy executive director for housing operations, director of multifamily finance production, director of portfolio management and compliance or director of real estate analysis 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 ceases;

(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 ceases.

(2) A Person commits an offense if the Person violates this section. An offense under this section is a Class A misdemeanor.

§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 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.

(b) Ineligible Building Types. Applications involving Ineligible Building Types as defined in §49.3(49) of this title will not be considered for allocation of tax credits under this QAP and the Rules.

(c) Scattered Site Limitations. Consistent with §49.3(29) 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 Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim such Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development. The Department shall not allocate more than $1.6 million of tax credits in any given Application Round to any Applicant, Developer, or entity that provides, or is anticipated to provide, for a fee, a guarantee to secure equity or financing for the transaction. Tax Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply:

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

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

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

(4) to a Development Consultant with respect to the provision of consulting services.

(e) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units.

(2) Rural Developments involving new construction will be limited to 76 Units unless the Market Analysis clearly documents that larger developments are consistent with the comparables in the community and that there is significant demand for additional Units. Rural Developments exceeding 76 Units based on the Market Analysis will be ineligible for the Rural Set-Aside.

(3) Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units. Tax Exempt Bond Developments will be limited to 280 Units. For the 2004 Application Round, Developments involving new construction, that are not Tax Exempt Bond Developments, will be limited to 250 Units, wherein the maximum rent restricted Units will be limited to 200 Units. For Applicants competing in the 2004 Texas Bond Review Board Multifamily Lottery, Tax Exempt Bond Developments will be limited to 250 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy for at least six months.

(f) 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.

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

(a) Regional Allocation Formula. As required by §2306.111 of the Texas Government Code, the Department will use a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling. The formula will be based on the need for housing assistance, and the availability of housing resources, and the Department will use the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula will establish targeted tax credit amounts for each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published in the Texas Register and on the Department's web site concurrently with the publication of the QAP.

(b) Set-Asides. The regional credit distribution amounts are additionally subject to the factors presented in paragraphs (1) - (5) of this subsection. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development would qualify:

(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 a 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 managing General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Managing Member.

(2) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which meet the Rural Development definition or are located in Prison Communities. Rural Developments applying for greater than 76 Units will be ineligible for the Rural Set-Aside. Of this 15% allocation, 25% will be set aside for Developments financed through TX-USDA-RHS. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under the 25% portion. Should there not be sufficient qualified Applications submitted for the TX-USDA-RHS Set-Aside, then the credits would revert to Developments that meet the Rural Development definition or are located in Prison Communities.

(3) At least 15% of the State Housing Credit Ceiling 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 and in both urban and rural communities in approximate proportion to the housing needs of each Uniform State Service Region.

(4) At least 60% of the State Housing Credit Ceiling will be allocated to General Set-Aside.

(5) At least 15% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Elderly Developments.

(c) Redistribution of Credits. If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Uniform State Service Regions and 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(c) of this title and the level of demand exhibited in the Uniform State Service Regions during the Allocation Round. However as described in subsection (b)(1) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

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

(a) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §49.21 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application along with the required Pre-Application Fee. 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 an Administrative Deficiency. 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) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria, and as requested by the Applicant, evaluated in regards to the Department's concentration policy. Any Application from a TX-USDA-RHS 515 Development (including new construction and rehabilitation) is exempted from the Pre-Application Evaluation Process and are not eligible to receive points for submission of a Pre-Application. An Application that has not received confirmation from the state office of RHS of its financing from TX-USDA-RHS may qualify for Pre-Application points, but such points shall be withdrawn upon the Development's receipt of TX-USDA-RHS financing.

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

(1) Submission of a "Pre-Application Submission Form" and "Pre-Application Self-Scoring Form," and

(2) Evidence of site control as evidenced by the documentation required under §49.9(e)(6)(A) of this title.

(d) Pre-Application Results. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (c) of this section, 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. To receive points an Applicant must meet the requirements of §49.9(f)(12) of this title.

§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 §49.21 of this title, to the Department during the Application Acceptance Period. A complete Application may be submitted at any time during the Application Acceptance Period, and is not limited to submission after the close of the Pre-Application Cycle. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application along with a new required Application fee. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative

Deficiency, including both threshold and selection criteria documentation. An Applicant may not change or supplement an Application in any manner after the filing deadline, except as it relates to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(1) of this title or to the amendment of an Application after a commitment or allocation of tax credits as further described in §49.18 of this title.

(b) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be 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.

(c) Evaluation Process. Applications will be reviewed according to the process outlined in this subsection.

(1) Threshold Criteria Review. Applications will be initially evaluated against the Threshold Criteria. Applications not meeting Threshold Criteria will be terminated, unless the Department determines that the failure to meet the Threshold Criteria is the result of Administrative Deficiencies, in which event the Applicant shall be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria will be rejected and the Applicant will be provided a written notice to the effect that the Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(2) Selection Criteria Review. For an Application to be considered under the Selection Criteria, the Applicant must demonstrate that the Development meets all of the Threshold Criteria requirements. Applications that satisfy the Threshold Criteria will then be scored and ranked according to the Selection Criteria listed in subsection (f) of this section. Where a particular scoring criterion involves multiple points, the Department will award points to the degree proportionate, in its determination, to which a proposed Development complied with that criterion. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for purposes of releasing the Submission Log in ranking order by score.

(3) Subsequent Evaluation of Prioritized Applications. After the Application is scored under the Selection Criteria, the Department will assign, as herein described, Developments for review for financial feasibility by the Department's credit underwriting division. Assignments for financial feasibility will be determined by selecting the Applications with the highest scores in each Set-Aside statewide and then in each Uniform State Service Region. 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 the Committee and Board consider necessary to ensure that all available housing tax credits are allocated within the period required by law.

(4) Underwriting Evaluation and Criteria. 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 low income housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title.

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

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

(5) Compliance Evaluation. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status of all members of the ownership structure by the Department's compliance division, in accordance with §49.19 of this title.

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

(d) Required Pre-Certification and Acknowledgement Procedures. No later than 7 days prior to the close of the Application Acceptance Period, an Applicant must submit the documents required in this subsection to obtain the required pre-certification and acknowledgement.

(1) Experience Certificate. Upon receipt of the evidence required under this paragraph, a certification from the Department will be provided to the Applicant for inclusion in their Application(s). Evidence must show that 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 a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of owner, General Partner, Developer or managing member. If a Public Housing Authority organized an entity for the purpose of developing residential

units or comparable commercial property, the Public Housing Authority shall be considered a principal for the purpose of this requirement. 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, managing member, or Developer of:

(i) at least 100 residential units or comparable commercial property; or

(ii) at least 36 residential units or comparable commercial property if the Development applying for credits is a rural Development.

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

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

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

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

(2) Financial Statement and Authorization to Release Credit Information. Upon receipt of the evidence required under this paragraph, an acknowledgement from the Department will be provided to the Applicant for inclusion in their Application(s). A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any Person with an ownership interest in the General Partner (or Managing Member), interest in the Applicant, or the Developer, or anticipated to provide guarantees to secure necessary financing. The statement must not be older than 90 days from the date of submission. If submitting partnership or corporate financials in addition to the statements of individuals, the certified financial statements, or audited financial statements if available, should be for the most recent fiscal year ended 90 days prior to the day the documentation is submitted. This document is required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual. Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities or net worth are not required to submit this documentation, but must submit a statement that this is the case.

(e) Threshold Criteria. The following Threshold Criteria listed in paragraphs (1) - (14) of this subsection are mandatory requirements at the time of Application submission:

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

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

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

(4) Certifications and Design Items. The "Certification Form" provided in the Application Submission Procedures Manual and supporting documents. This exhibit will provide:

(A) A description of the type of amenities proposed for the Development. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use (i.e. covered parking, storage, etc.), then the amenity may not be included among those provided to complete this exhibit. Developments with more than 36 units must provide at least four of the amenities provided in clauses (i) - (viii) of this subparagraph. Developments with 36 Units or less and/or Developments receiving funding from TX-USDA-RHS must provide at least two of the amenities provided in clauses (i) - (viii) of this subparagraph. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) Full perimeter fencing with controlled gate access;

(ii) designated playground and equipment;

(iii) community laundry room and/or laundry hook-ups in Units (no hook-up fees of any kind may be charged to a tenant for use of the hook-ups);

(iv) furnished community room;

(v) recreation facilities;

(vi) public telephone(s) available to tenants 24 hours a day;

(vii) on-site day care, senior center, or community meals room; or

(viii) computer facilities including internet access.

(B) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere at a minimum to the International Building Code as it relates to access, lighting and life safety issues.

(C) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.)

(D) 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 at least once in each 90-day period following the date of the Commitment Notice a report, 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.

(E) A certification that the Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. This includes that for all Developments, a minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for individuals with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS), shall be deemed to meet this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for individuals with hearing or vision impairments. Additionally, in Developments where all Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type must provide an accessible entry level in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. At the construction loan closing, a certification from an accredited architect will be required stating that the Development was designed in conformance with these standards and that all features have been or will be installed to make the Unit accessible for individuals with mobility impairments or individuals with hearing or vision impairments. A similar certification will also be required after the Development is completed. This requirement applies to all Developments including new construction and rehabilitation.

(F) A certification that the Development will adhere to the 2000 International Energy Conservation Code (IECC) and the Department's Minimum Standard Energy Saving Devices in the construction of each tax credit Unit, historic preservation codes notwithstanding. Minimum Standard Energy Saving Measures are identified in clauses (i) - (v) of this subparagraph. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit prior to the closing of the construction loan and in actual construction upon Cost Certification.

(i) Insulation values must meet the 2000 International Energy Conservation Code (IECC) for the region in which the development is located. Rehabilitation Developments must also include soffit and ridge vents and storm windows;

(ii) If newly installed, Energy Star or equivalently rated air handler and condenser; or heating and cooling systems with minimum SEER 12 A/C and AFUE 90% furnace if using gas; or in dry climates an evaporative cooling system may replace the Energy Star cooling system;

(iii) All appliances installed to be Energy Star rated and water heaters to have an energy factor greater than .93 for electric or greater than .62 for gas;

(iv) Maximum 2.5 gallon/minute showerheads and maximum 1.5 gallon/minute faucet aerators; and

(v) Installation of ceiling fans in living room and each sleeping room.

(G) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 11(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.

(H) All of the architectural drawings identified in clauses (i) - (v) 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) - (v) of this subparagraph. For Developments involving rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i), (ii) and (iii) of this subparagraph are required:

(i) a site survey or drawing of the entire property that is under the control the prospective Development Owner, which must be a professionally generated (e.g. computer-generated or architectural draft; not a sketch) plat drawn to scale from a metes and bounds description;

(ii) 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, common buildings and amenities; and

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

(iii) floor plans for each type of residential building and each type of common area building;

(iv) 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;

(v) Unit floor plans for each type of Unit showing special accessibility and energy features. The use of each room must be labeled. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application; and

(I) Rehabilitation Developments must submit photographs of the existing signage, typical building elevations and interiors, existing Development amenities, and site work. These photos should clearly document the typical areas and building components which exemplify the need for rehabilitation.

(5) 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.

(B) All Developments must submit the "Development Cost Schedule" provided in the Application Submission Procedures Manual. 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 Applicant,

including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

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

(E) Rehabilitation Developments must submit the "Proposed Work Write Up for Rehabilitation Developments" provided in the Application Submission Procedures Manual. This form must be prepared and certified by a Third Party registered or licensed architect, engineer or construction inspector.

(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.

(6) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) - (E) 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. 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 at least 90 days, whichever is greater; or

(iii) an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits or at least 90 days, whichever is greater.

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

(i) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

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

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

(II) the Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. No later than April 1, 2003 (or for Tax Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed), the Applicant must submit to the Department written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of appropriate zoning to the entity responsible for final approval of zoning decisions (city council or county commission). If this evidence is not provided on or before April 1, 2003, the Application will be terminated. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded.

(iii) In the case of a rehabilitation Development, if the property is currently a non-conforming use as presently zoned, a letter which discusses the items in subclauses (I) - (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) This Exhibit is required for New Construction only. Evidence of the availability of all necessary utilities/services to the development site. 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.

(D) 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 which identifies the mortgagor as the Applicant or entities which comprise the General Partner 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, or entities which comprise the Applicant 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. 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. While evidence of application for funding from another TDHCA program is not required except as indicated on the Uniform Application, the Applicant must clearly indicate that such an application has been filed as required by the Application Submission Procedures Manual. If the necessary financing has not been committed by the applicable lending agency, the Commitment Notice, Housing Credit Allocation or Determination Notice, as the case may be, will be conditioned upon Applicant obtaining a commitment for the required financing by a date certain, but no later than the date the Carryover Allocation Document is due to the Department; 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 Applicant to provide the proposed financing with funds that are not otherwise committed together with a letter from the Applicant's bank or banks confirming that sufficient funds are available to the Applicant. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(E) A copy of the full legal description and either of the documents described in clauses (i) and (ii) of this subparagraph, and satisfying the requirements of clause (iii) of this subparagraph, if applicable:

(i) 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 Applicant, or entities which comprise the Applicant; or

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

(iii) 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.

(7) Evidence of all of the notifications described in subparagraphs (A) - (D) of this paragraph. Such notices must be prepared in accordance with "Public Notifications" provided in the Application Submission Procedures Manual.

(A) A copy of the public notice published in the most widely circulated newspaper in the area in which the proposed Development will be located. The newspaper must be intended for the general population and may not be a business newspaper or other specialized publication. Such notice must run at least twice within a thirty day period. Such notice must be published prior to the submission of the Application to the Department and can not be older than three months from the first day of the Application Acceptance Period. In communities located within a Metropolitan Statistical Area the notice should be published in the newspapers of both the Development community and the Metropolitan Statistical Area. Developments that involve rehabilitation and which are already serving low income residents are not required to provide this exhibit.

(B) Evidence of notification of the local chief executive officer(s) (i.e., mayor and county judge), state senator, and state representative of the locality of the Development. Evidence of such notification shall include a letter which at a minimum contains a copy of the public notice sent to the official and proof of delivery in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Proof of notification should not be older than three months from the first day of the Application Acceptance Period.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must post a copy of the public notice in a prominent location at the Development throughout the period of time the Application is under review by the Department. A picture of this posted notice must be provided with this exhibit. When the Department's public hearing schedule for comment on submitted Applications becomes available, a copy of the schedule must also be posted until such hearings are completed. Compliance with these requirements shall be confirmed during the Department's site inspection.

(D) Public Housing Waiting List. Evidence that the Development Owner has committed in writing to the local public housing authority(ies) (PHA) the availability of Units and that the Development Owner agrees to consider households on the PHA's waiting list as potential tenants and that the Property is available to Section 8 and other tenant-based rental assistance certificate or voucher holders. Evidence of this commitment must include a copy of the Development Owner's letter to the PHA(s) and proof of delivery in the form of a certified mail receipt, overnight mail receipt, or confirmation letter from said PHA(s). Proof of notification should not be older than six months from the close of the Application Acceptance Period. If no PHA is within the locality of the Development, the Development Owner must utilize the nearest authority or office responsible for administering Section 8 programs.

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

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

(B) Each entity shown on an organizational chart as described in subparagraph (A) of this paragraph, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas:

(I) a certificate of reservation of the entity name from the Texas Secretary of State and from the state in which the entity is to be formed if different from Texas; and

(II) an executed letter of intent to organize or a copy of the draft organizational documents for the entity to be formed including Articles of Incorporation, Articles of Organization or Partnership Agreement.

(ii) For existing entities whether formed in or outside of the state of Texas:

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

(II) for entities formed in a state other than Texas a certificate of authority to do business in Texas or an application for a certificate of authority,

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

(iii) the Applicant must provide evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control of the Applicant, and that those persons constitute all persons required to sign or submit such documents. A cover sheet must be placed before the copy of the organizational documents, identifying the relevant document(s) where the evidence of authority to sign is to be found and specifying exactly where the applicable information exists within all relevant documents by page number or by section and subsection if the pages are not numbered.

(C) Each entity shown on an organizational chart as described in subparagraph (A) of this paragraph, shall provide a copy of the completed and executed Previous Participation and Background Certification Form. If the Developer of the Development is receiving more than 10% of the Developer fee, he/she will also be required to submit documents for this exhibit. The 2003 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 Applicant and their Affiliates. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) If the Development Owner or the Developer or any of their Affiliates shown on the organizational chart as described in subparagraph (A) of this paragraph (other than the Development Owner's limited partner) 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 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. This form is only necessary when the Developments involved are outside of 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 said agency.

(E) Evidence that the Developer and the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member) or their Principals have a record of successfully constructing or developing residential units or comparable commercial property (i.e. dormitory and hotel/motel) in the capacity of Developer, Development Owner, General Partner or managing member. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (d) of this section. Applicants must request this certification at least seven days prior to the close of the Application Acceptance Period. Applicants should ensure that the individual whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(9) 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.

(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 their unwillingness to do so.

(I) historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 45 days prior to the first day of the Application Acceptance Period. In lieu of the monthly operating statements, two annual operating statement summaries may be provided. If 12 months of operating statements or two annual operating summaries cannot be obtained, then the monthly operating statements since the date of acquisition of the Development 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 day the Application Acceptance Period closes, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

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

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

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

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

(A) All Applicants involving a nonprofit General Partner (or Managing Member), regardless of the Set-Aside applied under, must submit all of the documents described in clauses (i) - (iii) of this subparagraph which confirm that the Applicant is a Qualified Nonprofit Organization pursuant to Code, §42(h)(5)(C):

(i) an IRS determination letter which states that the Qualified Nonprofit Organization is a §501(c)(3) or (4) entity;

(ii) a copy of the articles of incorporation of the nonprofit organization which specifically states that the fostering of affordable housing is one of the entity's exempt purposes;

(iii) "Nonprofit Participation Exhibit"; and

(B) Additionally, all Applicants 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) - (v) of this subparagraph.

(i) evidence that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(ii) evidence 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 a majority of the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, being the managing General Partner (or 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;

(v) 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.

(11) Applicants applying for acquisition credits or affiliated with the seller 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 Submission Procedures Manual.

(A) an appraisal, not more than 6 months old as of the day the Application Acceptance Period closes, which complies with the Uniform Standards of Professional Appraisal Practice and the Department's Market Analysis and Appraisal Policy. For Developments qualifying in the TX-USDA-RHS Set-Aside, the appraisal may be more than 6 months old, but not more than 12 months old as of the day the Application Acceptance Period closes. This appraisal of the property must separately state the as-is, pre-acquisition or transfer value of the land and the improvements where applicable;

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

(C) clear identification of the selling Persons or entities, and details of any relationship between the seller and the Applicant or any Affiliation with the Development Team, Qualified Market Analyst or any other professional or other consultant performing services with respect to the Development. If any such relationship exists, complete disclosure and documentation of the related party's original acquisition and holding and improvement costs since acquisition, and any and all exit taxes, to justify the proposed sales price must also be provided; and

(D) "Acquisition of Existing Buildings Form."

(12) Evidence of an "Acknowledgement of Receipt of Financial Statement and Authorization to Release Credit Information" must be provided for any person with an ownership interest in the General Partner (or Managing Member), interest in the Applicant, or the Developer, or anticipated to provide guarantees to secure necessary financing, as required under subsection (d) of this section.

(13) Supplemental Threshold Reports. Documents under subparagraphs (A) and (B) of this paragraph must be submitted as further clarified 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 Development Owner must supply the Department with an updated letter from the Person or organization which prepared the initial assessment; however the Department will not accept any Phase I Environmental Site Assessment which is more than 24 months old as of the day the Application Acceptance Period closes. 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 Development Owners 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 Development Owner's expense by a disinterested Qualified Market Analyst in accordance with the Market Analysis Rules and Guidelines. In the event that a Market Analysis on the Development is older than 6 months as of the day the Application Acceptance Period closes, the Development Owner 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 day the Application Acceptance Period closes. 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 (11)(A) of this subsection, will satisfy the requirement for a Market Analysis; no additional Market Analysis is required; however the Department may request additional information as needed.

(i) The Department may determine from time to time that information not required in the Department Market Analysis

and Appraisal Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the Qualified Market Analyst to meet this need.

(ii) All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or the Market Analysis itself, 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 March 31, 2003. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, March 31, 2003. If the entire exhibit is not received by that time, the Application will be terminated for a Material Deficiency and will be removed from consideration.

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

(f) Selection Criteria. All Applications will be evaluated and ranking points will be assigned according to the Selection Criteria listed in paragraphs (1) - (13) of this subsection.

(1) Development Location Characteristics. Evidence, not more than 6 months old from the date of the close of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) - (D) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (D) of this paragraph will receive 5 points. A Development may only receive points under one of the subparagraphs (A) - (D) of this paragraph. A Development may receive points pursuant to subparagraph (E) of this paragraph in addition to any points awarded in subparagraphs (A) - (D) of this paragraph.

(A) A geographical area which is:

(i) a Targeted Texas County (TTC) or Economically Distressed Area; or

(ii) a Colonia, or

(iii) a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD.

(B) a designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 6 months from the close of the Application Acceptance Period.

(C) a city-sponsored Tax Increment Financing Zone (TIF), Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, specifically encouraged or channeled growth, neighborhood preservation or redevelopment. Such Developments must submit all of the following documentation: a letter from a city/county official verifying that the proposed Development is located within the city sponsored zone or district; a map from the city/county official which clearly delineates the boundaries of the district; and a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, or county commissioners court which documents that the designated area was:

(i) created by the local city council/county commission, and

(ii) targets a specific geographic area which was not created solely for the benefit of the Applicant.

(D) a non-impacted Census Block pursuant to the Young vs. Martinez judgment. Such Developments must submit evidence in the form of a letter from HUD that the Development is located in such an area.

(E) a Development which is located in a city or county with a relatively low ratio of awarded tax credits (in dollars) to its population. If the Development is located in an incorporated city, the city ratio will be used and if the Development is located outside of an incorporated city, then the county ratio will be used. Such ratios shall be calculated by the Department based on its inventory of tax credit developments and the 2000 Census Data. In the event that census data does not have a figure for a specific place, the Department will rely on the Texas State Data Center's place population estimates, or as a final source the Department will rely on the local municipality's most recent population estimate to calculate the ratio. The ratios will be published in the Reference Manual. Geographic area will be eligible for points as described in clauses (i) - (iv) of this subparagraph.

(i) A city or county with no LIHTC developments will receive eight points.

(ii) A city or county with a ratio greater than zero and less than one will receive six points.

(iii) A city or county with a ratio equal to or greater than one, but less than two, will receive two points.

(iv) A city or county with a ratio greater than four, will have four points deducted from its score.

(2) Housing Needs Characteristics. Each Development, dependent on the city or county where it is located, will yield a score based on the Uniform Housing Needs Scoring Component. If a Development is in an incorporated city, the city score will be used. If a Development is outside the boundaries of an incorporated city, then the county score will be used. The Uniform Housing Needs Scoring Component scores for each city and county will be published in the Reference Manual. (20 points maximum).

(3) Support and Consistency with Local Planning. All documents must not be older than 6 months from the close of the Application Acceptance Period. Points may be received under both subparagraph (A) or (B) of this paragraph.

(A) Evidence from the local municipal authority stating that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document; or a letter from the local municipal authority stating that there is no local plan and that the city supports the Development (6 points).

(B) Community Support. Points will be awarded based on the written statements of support from local and state elected officials representing constituents in areas that include the location of the Development and from neighborhood and/or community civic organizations for areas that encompass the location of the Development. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. This documentation must be provided as part of the Application. 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, nor do letters of support from organizations that are not active in the area that includes the location of the Development. For the purposes of this Exhibit neighborhood and/or community civic organizations do not include governmental entities, taxing entities or educational entities. Letters of support received after the close of the Application Acceptance Period will not be accepted for this Exhibit. Points can be awarded for letters of support as identified in clauses (i) - (iv) of this subparagraph, not to exceed a total of 6 points:

(i) from United States Representative or Senate Member (3 points each, maximum of 6 points)

(ii) from State of Texas Representative or Senate Member (2 points each, maximum of 4 points);

(ii) from the Mayor, County Judge, City Council Member, or County Commissioner indicating support; or a resolution from the local governing entity indicating support of the Development (maximum of 2 points);

(iv) from neighborhood and/or community civic organizations (1 point each, maximum of 2 points).

(4) Development Characteristics. Developments may receive points under as many of the following subparagraphs as are applicable; however to qualify for points under subparagraphs (B) - (H) of this paragraph, the Development must first meet the minimum requirements identified under subparagraph (A) of this paragraph, unless otherwise provided in the particular subparagraph. This minimum requirement does not apply to Developments involving rehabilitation or Developments receiving funding from TX-USDA-RHS.

(A) Unit Size. The square feet of all of the units in the Development, for each type of unit, must be at minimum:

(i) 500 square feet for an efficiency unit;

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

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

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

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

(B) Cost per Square Foot. For this exhibit hard costs shall be defined as construction costs, including site work, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be hard costs per square foot of net rentable area (NRA). The calculations will be based on the hard cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments do not exceed $60 per square foot. (1 point).

(C) Unit Amenities and Quality. Developments providing 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) - (xiii) of this subparagraph, not to exceed 10 points in total. Developments involving rehabilitation will double the points listed for each item, not to exceed 10 points in total.

(i) Covered entries (1 point);

(ii) Computer line/phone jack available in all bedrooms (only one phone line needed) (1 point);

(iii) Mini blinds or window coverings for all windows (1 point);

(iv) Ceramic tile floors in entry, kitchen and bathrooms (2 points);

(v) Laundry connections (1 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets (1 point);

(vii) Laundry equipment (washers and dryers) in units (3 points);

(viii) Twenty-five year architectural shingle roofing (1 point);

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

(x) Covered parking of at least one covered space per Unit (2 points);

(xi) Garages, which do not also qualify as covered parking (3 points);

(xii) Greater than 75% masonry on exterior, which can include stucco, but that excludes cementious board or efis products (3 points);

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

(D) The Development is an existing Residential Development without maximum rent limitations or set-asides for affordable housing for which the proposed rehabilitation is part of a community revitalization plan. If maximum rent limitations had existed previously, then the restrictions must have expired at least one year prior to the date of Application to the Department (4 points).

(E) The Development is a mixed-income Development comprised of both market rate Units and qualified tax credit Units. Points will be awarded to Development's with a Unit based Applicable Fraction which is no greater than:

(i) 80% (8 points); or,

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

(iii) 90% (4 points); or

(iv) 95% (2 points).

(F) Evidence that the proposed historic Residential Development has received an historic property designation by a federal, state or local Governmental Entity. Such evidence must be in the form of a letter from the designating entity identifying the Development by name and address and stating that the Development is:

(i) listed in the National Register of Historic Places under the United States Department of the Interior in accordance with the National Historic Preservation Act of 1966;

(ii) located in a registered historic district and certified by the United States Department of the Interior as being of historic significance to that district;

(iii) identified in a city, county, or state historic preservation list; or

(iv) designated as a state landmark (6 points).

(G) The Development consists of not more than 36 Units and is not a part of, or contiguous to, a larger Development (5 points).

(H) Evidence that the proposed Development is partially funded by a HOPE VI, Section 202 or Section 811 grant or project-based Section 8 voucher from HUD; or a Community Development Block Grant or HOME award. If the proposed Development involves a Section 811 grant the Applicant must provide evidence that the Development will comply with the Department's definition of Integrated Housing. The Development must have already applied for funding from the funding entity. Evidence shall include a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. Notice of actual commitment must be received consistent with subsection (e)(6)(D)(iii) of this section. In the event that an award is not made by the funding entity, the Department will reevaluate the Application to ensure its continued financial feasibility (5 points).

(5) Sponsor Characteristics. Developments may only receive points for one of the three criteria listed in subparagraphs (A) - (C) of this paragraph. To satisfy the requirements of subparagraph (A) or (B) of this paragraph, a copy of an agreement between the two partnering entities must be provided which shows that the nonprofit organization or HUB will hold an ownership interest in and materially participate (within the meaning of the Code §469(h)) in the development and operation of the Development throughout the Compliance Period and clearly identifies the ownership percentages of all parties (3 points maximum for one of subparagraphs (A) - (C) of this paragraph).

(A) Evidence that a HUB, as certified by the Texas Building and Procurement Commission (formerly General Services Commission), has an ownership interest in and materially participates in the development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission (formerly General Services Commission) that the Person is a HUB at the close of the Application Acceptance Period. Evidence will need to be supplemented, either at the time the Application is submitted or at the time a HUB certification renewal is received by the Applicant, confirming that the certification is valid through July 31, 2003 and renewable after that date.

(B) Joint Ventures with Qualified Nonprofit Organizations. Evidence that the Development involves a joint venture between a for profit organization and a Qualified Nonprofit Organization. The Qualified Nonprofit Organization must be materially participating in the Development as one of the General Partners (or Managing Members), but is not required to have Control, to receive these points. However, to also be eligible for the Nonprofit Set-Aside, as further described in §49.7 of this title, the Qualified Nonprofit Organization must have Control.

(C) The proposed Development involves the rehabilitation of existing Units, or on- or off-site replacement of Units, that are owned by a Public Housing Authority, and which Units, or replacement Units, will continue to be owned by a partnership Controlled by said Public Housing Authority or its nonprofit affiliate as evidenced by a partnership agreement showing the Control by the said Public Housing Authority. A Housing Finance Agency is not considered to be a Public Housing Authority for purposes of this exhibit.

(6) Developments Targeting Tenant Populations of Individuals with Children. The Rent Schedule of the Application must show that 50% or more of the Units in the Development have more than 2 bedroom (1 point).

(7) Development Provides Supportive Services to Tenants. Points may be received under both subparagraphs (A) and (B) of this paragraph.

(A) An Applicant 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 Development Owner must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

(i) Applicants 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; youth programs; scholastic tutoring; social events and activities; senior meal program; home-delivered meal program; community gardens or computer facilities; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(8) Tenant Characteristics--Populations with Special Needs. Evidence that the Development is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist 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, and as may be amended from time to time. All of the items described in subparagraphs (A) - (E) of this paragraph must be submitted:

(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 points).

(9) Low Income Targeting Points. An Applicant may qualify for points under subparagraph (C) of this paragraph. To qualify for these points, the rents for the rent-restricted Units must not be higher than the allowable tax credit rents at the rent-restricted AMGI level. For Section 8 residents, or other rental assistance tenants, the tenant paid rent plus the utility allowance is compared to the rent limit to determine compliance. The Development Owner, upon making selections for this exhibit will set aside Units at the rent-restricted levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA.

(A) No more than 50% of the total number of low income units (including Units at 60% of AMGI) will be counted as designated for tenants at or below 50% of the AMGI for purposes of determining the points in the 50%, 40% and 30% AMGI categories. No more than 30% of the total number of low income targeted units will be counted as designated for tenants at or below 40% of the AMGI for purposes of determining the points in the 40% and 30% AMGI categories. No more than 20% of the total number of low income targeted units will be counted as designated for tenants at or below 30% of the AMGI for purposes of determining the points in the 30% AMGI category. For purposes of calculating "Total Low Income Targeted Units" for this exhibit, Units at 60% of AMGI are also included.

(B) For purposes of calculating points no Unit may be counted twice in determining point eligibility.

(C) Developments should be scored based on the structure in the table below. Only Developments located in cities (or counties for Developments not located within a city) whose AMGI is below the statewide AMGI, may use Weight Factor B. All other Applicants are required to use Weight Factor A.
Figure: 10 TAC §49.9(f)(9)(C)

(10) Length of Affordability Period. In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Applicants 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 (8 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (12 points).

(11) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms (5 points).

(A) Upon the earlier to occur of:

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

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

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

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

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

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

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (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 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.

(12) Pre-Application Points. Developments which submit a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph shall receive 7 points. To be eligible for these points, the proposed Development in the Application must:

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

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

(C) be serving the same target population (family or elderly) as in the Pre-Application in the same Set-Asides; and

(D) achieve an Application score that is not more than 5% greater or less than the number of points requested at Pre-Application.

(13) Point Reductions. Penalties will be imposed on Applicant if the Applicant or any of its Affiliates who have requested extensions of Department deadlines, and did not meet the original submission deadlines, relating to developments receiving a housing tax credit commitment made in the application round preceding the current round. Applicants or Affiliates having filed an extension, but that met the original deadline as required, will not have points deducted. Extensions that will receive penalties include all types of extensions identified in §49.21 of this title, received on or before the close of Application Acceptance Period, including Developments whose extensions were authorized by the Board. For each extension request made, the Applicant will be required to pay a $2,500 extension fee as provided in §49.21(k) of this title and receive a 2 point deduction.

(g) Evaluation Factors. In the event that two or more Applications receive the same number of points in any given Set-Aside category and Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in paragraphs (1) - (6) of this subsection, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment. In addition, the Committee and Board may also choose to evaluate Applications and proposed Developments, including Tax Exempt Bond Developments, on the basis of factors other than (or in addition to) scoring, for one or more of the following reasons:

(1) to serve a greater number of lower income families for fewer credits;

(2) to ensure geographic dispersion within each Uniform State Service Region;

(3) to ensure the Development's consistency with local needs or its impact as part of a revitalization or preservation plan;

(4) to ensure the allocation of credits among as many different entities as practicable without diminishing the quality of the housing that is built as required under the Texas General Appropriations Act applicable to the Department;

(5) to give preference to a Development which is located in a QCT or a Difficult Development Area as specifically designated by the Secretary of HUD, and which also contributes to a concerted community revitalization plan; and

(6) to provide integrated, affordable accessible housing for individuals and families with different levels of income.

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

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

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

(1) In making a determination to allocate tax credits, the Board shall be authorized not to rely solely on the number of points scored by an Applicant. It shall in addition, be entitled to take into account, as appropriate, the factors described in §49.9(g) of this title. If the Board disapproves or fails to act upon the Application, the Department shall issue to the Development Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(2) Before the Board approves any Development Application, the Department shall assess the compliance history of the Applicant and any Affiliate of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development. 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, Applicant or Affiliate.

(3) On awarding a tax credit commitment, the Board shall document the reasons for each Development's selection, including an explanation of all 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 the Committee.

(b) Waiting List. If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. 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 in meeting compelling housing needs. 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 2003 calendar year.

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

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

(3) If tax credit authority shall become available to the Department later 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.

(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) Within approximately 15 business days after the close of the Application Acceptance Period, the Department shall:

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

(B) give notice of a proposed Development in writing to the:

(i) mayor or other equivalent chief executive officer of the municipality, if the Development or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Development or a part thereof is located, 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 local municipal authority 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 mayor or county judge before the Application is scored, if opposition is received prior to scoring being completed; and

(ii) state representative and state senator representing the area where a Development would be located. The state representative or senator may hold a community meeting at which the Department shall provide appropriate representation.

(C) The elected officials identified in clauses (i) and (ii) of subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process.

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

(5) The Department shall provide notice of and information regarding public hearings, Board meetings and Application opening and closing dates relative to housing tax credits to local housing departments, to appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, to nonprofit organizations, to on-site property managers of occupied developments that are the subject of Applications for posting in prominent locations at those Developments, and to any other interested persons including community groups, who request the information and shall post all such information to its web site.

(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 the relevant determinations, the results of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, will be posted to the Department's web site.

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

(A) provide the Application scores to the Board;

(B) if feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §49.20(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application.

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

be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

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

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

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

§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 2003 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 60 days after the date of the TBRB lottery. Such filing must be accompanied by the Application fee described in §49.21 of this title.

(2) Applicants which receive advance notice of a Program Year 2003 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 of the Application and the Application fee described in §49.21 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Any outstanding documentation required under this section must be submitted to the Department at least 45 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 exception being to the following: §§49.4, 49.7, 49.8, 49.9(c)(2) and (3), 49.9(f), 49.10(b) and (c), 49.11(a) and 49.14 of this title. Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §49.9(e) of this title. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. At the time of Application, Developments must demonstrate the Development's consistency with the bond issuer's consolidated plan or other similar planning document. Consistency with the local municipality's consolidated plan or similar planning document must also be demonstrated in those instances where the city or county has a consolidated plan.

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

(1) the services must be in 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, 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 make sure 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 paragraph, 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 deemed that causes for the increased Eligible Basis were beyond the control of the Development Owner, were not foreseeable by the Development Owner at the time of Application and were not preventable during the construction of the Development, as determined by the Board.

(e) Satisfaction of Requirements for Tax Exempt Bond Developments. If the Department staff determines that all requirements of this section have been met, the Board, shall authorize the Department

to issue a Determination Notice to the Applicant 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 Applicant in a specified amount, subject to the feasibility determination described at §49.17 of this title, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §49.21 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting an extension request and associated extension fee as described in §49.21 of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(2) if the Application is with respect to 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 Applicant 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 §49.21 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

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

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

(5) A Commitment or Determination Notice shall not be issued with respect to any Development in violation of the Concentration Policy, unless The Committee makes a recommendation to the Board based on the need to fulfill the goals of the Low Income 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.

(6) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or control of one or more other low income rental housing properties in the state of Texas funded by the Department, or outside the state of Texas, that is in Material Non-Compliance with the LURA (or any other document containing an Extended Low Income Housing Commitment) or the program rules in effect for such property as of June 30, 2003 (or for Tax Exempt Bond Developments as of 10 business days prior to the Board's vote to allocate credits. Any corrective action documentation affecting the Material Non-Compliance status score for Applicants must be received by the Department no later than May 15, 2003 (or for Tax Exempt Bond Developments no later than 20 business days prior to the Board's vote to allocate credits).

(b) Agreement and Election Statement. Together with or following the Development Owner's acceptance of the commitment or determination, 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 Commitment 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 needed, to assure that the Commitment Notice can be so executed.

§49.14. Carryover, 10% Test.

(a) Carryover. All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued. 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 October of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in October, it must be submitted no later than the first Friday in October. 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) 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.

(2) A review of information provided by the IRS as permitted pursuant to IRS Form 8821, Tax Information Authorization, for the release of tax information relating to non-disclosure or recapture issues. Each Applicant must execute and provide to the Department Form 8821 within ten business days of the issuance of a Commitment

Notice or Determination Notice. The form must be signed and executed on behalf of the Development Owner. Any information provided by the IRS will be evaluated by the Department in accordance with §49.3(53) of this title and may be utilized by the Board to determine if a Carryover Allocation will be made.

(3) Attendance of the Development Owner and Development architect at eight hours of Fair Housing training on or before the closing of the construction loan.

(b) 10% Test. No later than six months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis has to 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 in a format prescribed by the Department.

§49.15. Closing of the Construction Loan, Commencement of Substantial Construction.

(a) Closing of the Construction Loan. The Development Owner must submit evidence of having closed the construction loan no later than the second Friday in June of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.21 of this title. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. The Carryover Allocation will automatically be terminated if the Development Owner fails to meet the aforementioned closing deadline (taking into account any extensions), and has not had an extension approved, and all credits previously allocated to that Development will be recovered and become a part of the State Housing Credit Ceiling for the applicable year.

(b) Commencement of Substantial Construction. The Development Owner must commence and continue substantial construction activities not later than the second Friday in November of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.21 of this title. The minimum activity necessary to meet the requirement of substantial construction for new Developments will be defined as having poured foundations for at least 50% of all of the buildings in the Development. The minimum activity necessary to meet the requirement of substantial construction for rehabilitation Developments will be defined as having expended 10% of the construction budget as documented by the inspecting architect. Evidence of such activity shall be provided in a format prescribed by the Department.

§49.16. Cost Certification, LURA.

(a) Cost Certification. Developments that will be placed in service and request IRS Forms 8609 in the year the Commitment Notice was issued must submit the required Cost Certification documentation and the compliance and monitoring fee to the Department by the second Friday in November of that same year. The Department will issue IRS Forms 8609 no later than 90 days from the date of receipt of the Cost Certification documentation, so long as all subsequent documentation requested by the Department related to the processing of the Cost Certification documentation has been provided on or before the seventy-fifth day from the date of receipt of the original Cost Certification documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator.

(b) Land Use Restriction Agreement (LURA). Prior to the Department's issuance of the IRS Form(s) 8609 for building(s) in a Development, the Development Owner must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Development Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. 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 shall physically inspect the Development for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. If an Owner intends for the Department to execute a LURA by the end of a calendar year, then the proposed LURA, executed by the Owner and lienholder, if necessary, must be submitted to the Department for execution no later than December 1 of that calendar year.

§49.17. Housing Credit Allocations.

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Applicant's Application to determine whether a building is eligible for the credit under the Code, §42. The Applicant 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 an Applicant 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 Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Applicant must meet specific criteria as defined by the Seventy-fifth Legislature. A General Contractor hired by an Applicant or an 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. Evidence must be submitted to the Department, in accordance with

§49.9(e)(4)(G) 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 Applicant identified in the related Commitment Notice or Determination Notice. If an allocation is made in the name of the party expected to be the General Partner or Managing Member in an eventual owner partnership or limited liability company, the Department may, upon request, approve a transfer of allocation to such owner partnership or limited liability company in which such party is the sole General Partner or Managing Member. Any other transfer of an allocation will be subject to review and approval by the Department. 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 documentation regarding the new owner including 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 §49.21 of this title have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accredited accessibility inspector to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings.

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

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to required plans and specifications. At a minimum, all Development inspections must include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent, third party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.21 of this title.

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document, 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, a newly constructed or rehabilitated building is not placed in service until all units in such building have been completed and 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 Applicant 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 as a Development.

(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 Low Income 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.

§49.18. Board Reevaluation, Appeals; Amendments, Housing Tax Credit and Ownership Transfers, Withdrawals, Cancellations.

(a) Board Reevaluation. Regardless of project stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (c)(3) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Appeals Process. An Applicant may appeal decisions made by the Department.

(1) The decisions that may be appealed are identified in subparagraphs (A) - (C) of this paragraph.

(A) a determination regarding the Application's satisfaction of:

(i) Pre-Application or Application Threshold Criteria;

(ii) 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.

(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.

(c) Amendment of Application Subsequent to Allocation by Board.

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, 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 §49.19 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment.

(3) For Applications approved by the Board prior to September 1, 2001, the Executive Director will approve or deny the amendment request. For Applications approved by the Board after September 1, 2001, the Board must vote on whether to approve the amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent; and

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

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(d) Housing Tax Credit and Ownership Transfers. An Applicant 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 unless the Applicant obtains the

Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer. An Applicant 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. An Applicant seeking Executive Director approval of a transfer must provide to the Department a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. 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 Low Income Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations.

(e) 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.

(f) 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 Development Owner or any member of the Development Team, 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, the Development Team or the Development is untrue or misleading;

(3) an event occurs with respect to any member of the Development Team 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 Development Owner, any member of the Development Team, or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

§49.19. Compliance Monitoring and Material Non-Compliance.

(a) The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Such procedure is set out in this QAP and in the Owner's Compliance Manual prepared by the Department's Compliance Division, as amended from time to time. Such procedure only addresses forms and records that may be required by the Department to enable the Department to monitor a Development for violations of the Code and the LURA and to notify the IRS of any such non-compliance. This procedure does not address forms and other records that may be required of Development Owners by the IRS more generally, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS audit.

(b) The Department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction or rehabilitation phase associated with any Development under this title. The Department will monitor under this requirement by requiring a copy of reports from all construction inspections performed for the lender and/or syndicator for the Development. If necessary, the Department may obtain a Third-Party inspection report for purposes of monitoring. The Applicant must provide the Department with copies of all inspections made throughout the construction of the Development within fifteen days of the date the inspection occurred. The Department, or any third-party inspector hired by the Department, shall be provided, upon request, any construction documents, plans or specifications for the Development to perform these inspections. The monitoring level for each Development must be based on the amount of risk associated with the Development. The Department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each Development. After completion of a Development's construction phase, the Department shall periodically review the performance of the Development to confirm the accuracy of the Department's initial compliance evaluation during the construction phase. Developments having financing from TX-USDA-RHS will be exempt from these inspections, provided that the Applicant provides the Department with copies of all inspections made by TX-USDA-RHS throughout the construction of the Development within fifteen days of the date the inspection occurred.

(c) The Department will monitor compliance with all covenants made by the Development Owner in the Application and in the LURA, whether required by the Code, Treasury Regulations or other rulings of the IRS, or undertaken by the Development Owner in response to Department requirements or criteria.

(d) The Department may contract with an independent third party to monitor a Development during its construction or rehabilitation and during its operation for compliance with any conditions imposed by the Department in connection with the allocation of housing tax credits to the Development and appropriate state and federal laws, as required by other state law or by the Board. The Department may assign Department staff other than housing tax credit division staff to perform the relevant monitoring functions required by this section in the construction or rehabilitation phase of a Development.

(e) The Department shall create an easily accessible database that contains all Development compliance information developed under this section.

(f) The Development Owner must keep records for each qualified low income building in the Development, showing on a monthly basis (with respect to the first year of a building's Credit Period and on an annual basis, thereafter):

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged for each residential rental Unit in the building including, with respect to low income Units, documentation to support the utility allowance applicable to such Unit;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, all available Units were rented;

(6) the annual income certification of each tenant of a low income Unit, in the form designated by the Department in the Compliance Manual, as may be modified from time to time;

(7) 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"), 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;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. whether tenant facilities are available on a comparable basis to all tenants; whether any fee is charged for use of the facilities; whether facilities are reasonably required by the Development); and

(10) any additional information as required by the Department.

(g) The Development Owner will deliver to the Department no later than the last day in April each year, the current audited financial statements, in form and content satisfactory to the Department, itemizing the income and expenses of the Development for the prior year.

(h) Specifically, to evidence compliance with the requirements of the Code, §42(h)(6)(B)(iv) which requires that the LURA prohibit Development Owners of all tax credit Developments placed in service after August 10, 1993 from refusing to lease to persons holding Section 8 vouchers or certificates because of their status as holders of such Section 8 voucher or certificate. Development Owners must comply with Department rules under §1.14 of this title.

(1) A Development funded or administered by the Department is prohibited from:

(A) excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S. C. Section 143F);

(B) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual or family's share of the total monthly rent payable to the Development. A Development Owner must maintain a written management plan that is available for review upon request. Such management plan must clearly state the following objectives:

(i) prospective applicants who hold Section 8 vouchers or certificates are welcome to apply and will be provided the same consideration for occupancy as any other applicant;

(ii) any minimum income requirements for Section 8 voucher and certificate holders will only be applied to the portion of the rent the prospective tenant would pay, provided, however, that if Section 8 pays 100% of the rent for the Unit, the Development Owner may establish other reasonable minimum income requirements to ensure that the tenant has the financial resources to meet daily living expenses. Minimum income requirements for Section 8 voucher and certificate holders will not exceed 2.5 times the portion of rent the tenant pays; and

(iii) all other screening criteria, including employment policies or procedures and other leasing criteria (such as rental history, credit history, criminal history, etc.) must be applied to applicants uniformly and in a manner consistent with the Texas and federal Fair Housing Acts and with Department and Code requirements;

(2) In addition the following is required for Developments funded or administered by the Department:

(A) post Fair Housing logos and the Fair Housing poster in the leasing office;

(B) approve and distribute a written Affirmative Marketing Plan to the property management and on-site staff; and

(C) communicate annually during the first quarter of each year in writing with the administrator of each Section 8 program which has jurisdiction within the geographic area where the Development is located. Such communication will include information on the Unit characteristics and rents and will advise the administrating agency that the property accepts Section 8 vouchers and certificates and will treat referrals in a fair and equal manner. Copies of such correspondence must be available during on-site reviews conducted by the Department. A prospective tenant participating in the voucher program shall have the right to report to the administrator of the Section 8 program that provided the certificate or voucher an exclusion from admission to a Development based on a financial or minimum income standard requiring the tenant to have a monthly income of more than 2.5 times the tenant or tenant's family share of the total monthly rent payable to the Development Owner. The administrator shall promptly report such exclusion to the Department.

(3) A Housing Sponsor that fails to comply with the requirements and procedures of this subsection is subject to the following sanctions:

(A) Failure to lease to a prospective tenant due to the applicant's status as a recipient of a federal rental assistance voucher or certificate will result in a material non-compliance score as more fully described in subsection (s) of this section.

(B) A complaint of exclusion from admittance as described in paragraph (5) of this subsection that has been verified by the Department shall result in a non-compliance score as more fully described in subsection (s) of this section for a period of one year from the date of the Department's verification of the complaint.

(i) Record retention provision. The Development Owner is required to retain the records described in subsection (f) of this section 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.

(j) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Development Owner of a completed Development an Owner's Certification of Program Compliance (form provided by the Department) to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Development for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Development Owner, will be considered not in compliance with the provisions of §42 of the Code and reported to the IRS on Form 8823, Low Income Housing Credit Agencies Report of Non Compliance. The Owner Certification of Program Compliance

shall cover the preceding calendar year and 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 of any building in the Development, or if there was such a change, the Applicable Fraction to be reported to the IRS for each building in the Development for the certification year;

(C) the Development Owner has received an annual income certification from each low income resident and documentation to support that certification;

(D) each low income Unit in the Development was rent-restricted under the Code, §42(g)(2);

(E) 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 the Code, §42(I)(3)(B)(iii) and (iv));

(F) 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;

(G) each building in the Development is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), 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. If a violation report or notice was issued by the governmental unit, the Development Owner must attach a copy of the violation report or notice. In addition, the Development Owner must state whether the violation has been corrected;

(H) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Development, or that there has been a change, and the nature of the change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the Development Owner has received federal subsidies with respect to the Development which had not been previously received or disclosed to the Department in writing);

(I) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Development, such as swimming pools, other recreational facilities, washer/dryer hook ups, appliances and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(J) if a low income Unit in the Development became vacant during the year, reasonable attempts were, or are being, made to rent that Unit or the next available Unit of comparable or smaller size to tenants having a qualifying income, and such Unit or the next available Unit of comparable or smaller size was actually rented to tenants having a qualifying income, before any other Units in the Development were, or will be, rented to tenants not having a qualifying income;

(K) if the income of tenants of a low income Unit in the Development increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available Unit of comparable or smaller size in that building was, or will be, rented to residents having a qualifying income;

(L) a LURA including an Extended Low Income Housing Commitment as described in the Code, §42(h)(6), 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 the Code, §42(h)(6)(B)(iv) 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;

(M) no change in the ownership of a Development has occurred during the reporting period;

(N) the Development Owner has not been notified by IRS that the Development is no longer "a qualified low income housing Development" within the meaning of the Code, §42;

(O) the Development met all terms and conditions which were recorded in the LURA, or if no LURA was required to be recorded, the Development met all representations of the Development Owner in the Application for credits;

(P) if the Development Owner received its Housing Credit Allocation from the portion of the state ceiling set aside for Developments involving Qualified Nonprofit Organizations under the Code, §42(h)(5), a Qualified Nonprofit Organization owned an interest in and materially participated in the operation of the Development within the meaning of the Code, §469(h); and

(Q) no low income Units in the Development were occupied by households in which all members were Students.

(2) Review.

(A) The Department staff will review each Owner's Certification of Program Compliance for compliance with the requirements of the Code, §42.

(B) The Department will perform on-site inspections of all buildings in each low income Development by the end of the second calendar year following the year the last building in the Development is placed in service and, for at least 20% of the low income Units in each Development, inspect the Units and review the low income certifications, the documentation the Development Owner has received to support the certifications, the rent records for each low income tenant in those Units, and any additional information that the Department deems necessary.

(C) At least once every three years, the Department will conduct on-site inspections of all buildings in the Development, and for at least 20% of the Development's low income Units, inspect the Units and review the low income certifications, the documentation supporting the certifications, and the rent records for the tenants in those Units.

(D) The Department may, at the time and in the form designated by the Department, require the Development Owners to submit for compliance review, information on tenant income and rent for each low income Unit, and may require a Development Owner to submit for compliance review 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.

(E) The Department will randomly select which low income Units and tenant records are to be inspected and reviewed by the Department. The review of the tenant records may be undertaken wherever the Development Owner maintains or stores the records. Units and tenant records to be inspected and reviewed will be selected in a manner that will not give Development Owners advance notice that a

particular Unit and tenant records for a particular year will or will not 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 tenant records for review.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TX-USDA-RHS, whereby the TX-USDA-RHS agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TX-USDA-RHS under its §515 program. Owners of such buildings may be excepted from the review procedures of subparagraph (B) or (C) of paragraph (2) of this subsection or both; however, if the information provided by TX-USDA-RHS is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Development Owner must provide the Department with additional information. TX-USDA-RHS Developments satisfy the definition of Qualified Elderly Development if they meet the definition for elderly used by TX-USDA-RHS, which includes persons with disabilities.

(k) Inspection provision. The Department retains the right to perform an on site inspection of any low income Development including all books and records pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment, whichever is later. An inspection under this subsection may be in addition to any review under subsection (j)(2) of this section.

(l) Inspection Standard. For the on-site inspections of buildings and low income Units, the Department shall review any local health, safety, or building code violations reported to, or notices of such violations retained by, the Development Owner, under subsection (j)(1)(G) of this section, and determine whether the Units satisfy local health, safety, and building codes or the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety and building codes. Developments must continue to satisfy these codes and if the Department becomes aware of any violation of these codes, the violations must be reported to the IRS.

(m) The Department retains the right to require the Owner to submit tenant data in the electronic format as developed by the Department. The Department will provide general instruction regarding the electronic transfer of data.

(n) Notices to Owner. The Department will provide prompt written notice to the Development Owner if the Department does not receive the certification described in subsection (j)(1) of this section or discovers through audit, inspection, review or any other manner, that the Development is not in compliance with the provisions of the Code, §42 or the LURA. The notice will specify a correction period which will not exceed 90 days from the date of notice to the Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months from the date of notice to the Owner if it determines there is good cause for granting an extension. If any communication to the Development Owner under this section is returned to the Department as unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner.

(o) Notice to the IRS.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department), but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the non-compliance or failure to certify.

(2) If a particular instance of non-compliance is not corrected within three years after the end of the permitted correction period, the Department is not required to report any subsequent correction to the IRS.

(3) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in this section for three years from the end of the calendar year the Department receives the certifications and records.

(p) Notices to the Department. A Development Owner must notify the division responsible for compliance within the Department in writing of the events listed in paragraphs (1) - (3) of this subsection.

(1) prior to any sale, transfer, exchange, or renaming of the Development or any portion of the Development. For Rural Developments that are federally assisted or purchased from HUD, the Department shall not authorize the sale of any portion of the Development;

(2) any change of address to which subsequent notices or communications shall be sent; or

(3) within thirty days of the placement in service of each building, the Department must be provided the in service date of each building.

(q) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the Development Owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner including the Development Owner's noncompliance with the Code, §42.

(r) These provisions apply to all buildings for which a low income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Development was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the IRS in a manner consistent with subsection (j) of this section.

(s) Material Non-Compliance. In accordance with §49.5(b)(6) and (7) of this title, the Department will disqualify an Application for funding if the Applicant, the Development Owner, or the General Contractor, or any Affiliate of the Applicant, the Development Owner, or the General Contractor that is active in the ownership or Control of one or more other low income rental housing properties located in or outside the State of Texas is determined by the Department to be in Material Non-Compliance on the date the Application Round closes. The Department will classify a property as being in Material Non-Compliance when such property has a Non-Compliance score that is equal to or exceeds 30 points in accordance with the methodology and point system set forth in this subsection, or if in accordance with §49.5(b)(7) of this title, the Department makes a determination that the non-compliance reported would equal or exceed a non-compliance score of 30 points if measured in accordance with the methodology and point system set forth in this subsection.

(1) Each property that has received an allocation from the Department will be scored according to the type and number of noncompliance events as it relates to the Low Income Housing Tax Credit

Program or other Department programs. All Developments regardless of status that have received an allocation are scored even if the project no longer actively participates in the program.

(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 reduce to the "corrected value" in paragraph (4) of this subsection. 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. 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. For Applicants under this QAP, a non-compliance report will be run by the Department's Compliance Division on the date the Application Round closes. Any corrective action documentation affecting this compliance status score must be received by the Department no later than February 1, 2003.

(3) Events of non-compliance are categorized as either "development events" or "unit/building events". Development events of non-compliance affect all the buildings in the property. However, the property 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 building cited with an event. The building scores accumulate towards the total score of the Development.

(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 property 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 property to be in Material Non-Compliance. For purposes of these scores, the terms "uncorrected" and "corrected" refer to actions taken subsequent to notification of non-compliance by the Department.

(A) Development Non-Compliance items are identified in clauses (i) - (xx) of this subparagraph.

(i) Major property condition violations. As determined by the Department the project displays major violations of health, safety and building code or the property does not satisfy the uniform physical condition standards. Uncorrected is 30 points. 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 is 30 points. Corrected is 10 points.

(iii) Development not available to general public. Determination of violation under the Fair Housing Act. Uncorrected is 30 points. Corrected is 10 points.

(iv) Development is out of compliance and never expected to comply. Uncorrected is 30 points.

(v) Failure 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.

(vi) No evidence or failure to certify to non-profit material participation for Owner having received an allocation from the Nonprofit Set-Aside. Uncorrected is 10 points. Corrected is 3 points.

(vii) Failure to meet additional State required rent and occupancy restrictions. Development has failed to meet state restrictions, if any, that exist in addition to the federal requirements. Uncorrected is 10 points. Corrected is 3 points.

(viii) Failure to provide required supportive services as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(ix) Failure to provide housing to the elderly as promised at Application. Uncorrected is 10 points. Corrected is 3 points.

(x) 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.

(xi) Owner failed to provide required annual notification to local administering agency for the Section 8 program. Uncorrected is 5 points. Corrected is 2 points.

(xii) Changes in Eligible Basis. Changes occur when common areas become commercial; fees are charged for facilities, etc. Uncorrected is 10 points. Corrected is 3 point.

(xiii) Owner failed to post Fair Housing Logo and/or poster in leasing offices. Uncorrected is 3 points. Corrected is 1 point.

(xiv) LURA not in effect. The LURA was not executed within the required time period. Uncorrected is 10 points. Corrected is 3 point.

(xv) Owner failed to pay fees or allow on-site monitoring review. Uncorrected is 3 points. Corrected is 1 point.

(xvi) Failure to submit annual Owner Certification of Program Compliance or other annual, monthly, or quarterly reports. Uncorrected is 10 points. Corrected is 3 point.

(xvii) Owner failed to make available or maintain management plan with required language. Uncorrected is 3 points. Corrected is 1 point.

(xviii) Owner failed to approve and distribute Affirmative Marketing Plan. Uncorrected is 3 points. Corrected is 1 points.

(xix) 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 point.

(xx) Failure 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 point.

(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.

(iii) Low income units used on transient basis. Uncorrected is 3 points. Corrected is 1 point.

(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 tax credit rent limits. Uncorrected is 3 points. Corrected is 1 point.

(vi) Utility allowance not calculated properly. Uncorrected is 3 points. Corrected is 1 point.

(vii) Failure to maintain or provide tenant income certification and documentation. Uncorrected is 3 points. Corrected is 1 point.

(viii) 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.

(ix) When a low income Unit became vacant, owner failed 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.

(x) 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.

(t) Utility Allowances utilized during Affordability Period. The Department will monitor to determine whether rents comply with the published tax credit rent limits using the utility allowances established by the local housing authority. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one which most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

§49.20. Department Records, Application Log, IRS Filings.

(a) Department Records. At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) the cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Application Log. The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) the names of the Applicant and all Persons with an ownership interest in 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 IRS Form 8609 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.

§49.21. Program Fees, Refunds, Public Information Requests, Amendments of Fees and Notification of Fees, Extensions.

(a) Timely Payment of Fees. All fees must be paid as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, will cause the Application, commitment or allocation to be terminated.

(b) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $5 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends

to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee.

(c) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $15 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $20 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee.

(d) Refunds of Pre-Application or Application Fees. The Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 30% of the review, the site visit will constitute 45% of the review, and Threshold and Selection review will constitute 25% of the review. The Department must provide the refund to the Applicant not later than the 30th day after the date the last official action is taken with respect to the Application.

(e) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent third party underwriter in accordance with §49.9(c)(4) of this title if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment notice, a non-refundable commitment fee equal to 4% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check.

(g) Compliance Monitoring Fee. Upon the Development being placed in service, the Development Owner will pay a compliance monitoring fee in the form of a check equal to $25 per tax credit Unit per year or $100, whichever is greater. Payment of the first year's compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Development. Subsequent anniversary dates on which compliance monitoring fee payments are due shall be determined by the date the Development was placed in service.

(h) Building Inspection Fee. The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $500.

(i) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Texas Building and Procurement Commission (formerly General Services Commission) determines the cost of copying, and other costs of production.

(j) Periodic Adjustment of Fees by the Department and Notification of Fees. All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish not later than July 1 of each year a schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(k) Extension Requests. All extension requests relating to the Commitment Notice, Carryover, Closing of Construction Loan, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department at least 30 days prior to the date for which an extension is being requested. Extension requests and fees 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. The Department, in its sole discretion, may consider and grant such extension requests for all items except for the Closing of Construction Loan and Substantial Construction Commencement. The Board may grant extensions, for the Closing of Construction Loan and Substantial Construction Commencement. The Board may waive related fees.

§49.22. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department will be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Low Income 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. Notice by courier, express mail, certified mail, or registered mail will be effective on the date it is officially recorded as delivered by return receipt or equivalent and in the absence of such record of delivery it will be presumed to have been delivered by the fifth business day after it was deposited, first-class postage prepaid, in the United States first class mail. 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.

§49.23. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules in cases in which the Board finds that compelling circumstances exist outside the control of the Applicant or Development Owner.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001, as may be amended from time to time.

§49.24. Deadlines for Allocation of Low Income Housing Tax Credits.

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft Qualified Allocation Plan 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 Qualified Allocation Plan not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the Qualified Allocation Plan not later than December 1 of each year.

(d) An Applicant for a Housing Tax Credit to be issued a Commitment Notice during the Application Round in a calendar year must submit an Application to the Department not later than March 1.

(e) 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.

(f) The Board shall issue final Commitment Notices for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31.

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 November 18, 2002.

TRD-200207507
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 8, 2002
Proposal publication date: September 27, 2002
For further information, please call: (512) 475-3726

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PART 5. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT

CHAPTER 182. BUSINESS ASSISTANCE SUBCHAPTER B. LINKED DEPOSIT PROGRAM

10 TAC §§182.52, 182.54, 182.55, 182.56, 182.58, 182.60

The Texas Department of Economic Development (department) adopts amendments to Chapter 182. Subchapter B Linked Deposit Program, §§182.52, 182.54, 182.55, 182.56, 182.58 and 182.60 relating to encouraging lending to historically underutilized businesses, child-care providers, nonprofit corporations, and to small businesses located in enterprise zones. Section 182.56 is adopted with changes to the text as published in the October 11, 2002, *Texas Register* (27 TexReg 9518). Sections 185.52, 182.54, 182.55, 182.58 and 182.60 are adopted without changes and will not be republished. The Linked Deposit Program is authorized by Texas Government Code, Chapter 481, Subchapter N.

The amendments are necessary to clarify program practices, to conform the rules to the current statute and to reflect the abolishment of the State Depository Board by H.B. 2380 (75th Legislature) . Minor punctuation and grammatical errors have been corrected.

Amendments to §182.52 update the current statutory citation to the definition of the term collateral and remove the reference to the State Depository Board.

Amendments to §182.54 clarify that a lender that is not a state depository must apply to the comptroller for such designation; specify the process for determining the creditworthiness of the borrower; clarify that an original loan application must be submitted to the department; provide when the lender must certify the interest rate; clarify that the time period for the lender's compliance report described as 10 days means 10 business days after funding; clarify the lender's responsibilities to report certain matters concerning the loan to the department and to the comptroller and specify the deadline for such reports; and specify that the lender must comply with all the terms and conditions of the linked deposit agreement.

Amendments to §182.55 clarify that a time period described as 10 days means 10 business days and provides that an original linked deposit application must be forwarded to the comptroller.

Amendments to §182.56 clarify that the lender rather than the department must provide written notice of funding of the loan to the comptroller, clarifies the comptroller's responsibilities to wire the linked deposit and provide documentation to the department concerning the funding, clarifies when the comptroller may adjust the amount of the linked deposit, clarify the reporting requirements and the penalty for failure to comply with the reporting requirements.

Amendment to §182.58 updates the rule to specify that the limit that may be placed in linked deposits is $6 million, in conformity with the current statute.

Amendment to §182.60 clarifies the contact information for communications with the department.

No comments on the proposed amendments were received.

The amendments are adopted pursuant to Government Code §481.0044(a), which directs the Governing Board of the department to adopt rules for administration of department programs, Government Code §481.193(b), which directs the department to adopt rules for the Linked Deposit Program, and Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Texas Government Code, Chapter 481, Subchapter N, is affected by this adoption.

§182.56. Acceptance and Rejection Procedures.

(a) The comptroller shall review completed applications from the department.

(b) If the comptroller disagrees with the department's recommendation, the comptroller and the department shall meet to resolve the disagreement.

(c) Unless comptroller disagrees with the department, upon receipt of the completed application, the required collateral from the lender, and written notice of funding of the loan from the lender and

execution by the department, the comptroller and the lender of a written deposit agreement containing the information required by Government Code, §481.193(h), the comptroller will wire the linked deposit to the lender in immediately available funds the same day, provided written notice of funding of the loan is received by noon. The comptroller will then provide the department a confirmation report of the linked deposit, as well as the original, fully executed loan application.

(d) The comptroller shall determine the terms and conditions of the linked deposit once the maturity date is established. The applicable interest rate for the linked deposit can be determined by referring to the market rate of a United States treasury bill or note of comparable maturity as listed in the current issue of the Wall Street Journal. The interest rate to be paid on a linked deposit may be modified during the period of the loan, as long as the new interest rate complies with the provisions of Government Code, §481.192.

(e) An eligible borrower or a lender may request reconsideration of the rejection of an application by the department executive director or governing board. The executive director's or governing board's decision on the application shall be final and binding.

(f) A lender shall terminate the linked deposit if the loan is prepaid. Quarterly principal reductions of $1,000 or more will result in a corresponding reduction of the linked deposit by the comptroller in a like amount (rounded to the nearest thousand dollars) following the end of each fiscal quarter ending in November, February, May, and August. Lenders shall submit quarterly reports to the department for each active linked deposit loan. Quarterly reports will be due to the department on the 15th day of the month following the end of each fiscal quarter. If the lender fails to submit the quarterly report to the department, department will send a written notification of noncompliance to the comptroller. Upon completion of the quarterly review by the comptroller and the department, the comptroller will adjust the linked deposit to the outstanding principal balance rounded to the nearest thousand dollars.

(g) If a lender ceases to be a state depository, the comptroller shall withdraw the linked deposits. If the lending institution that has a linked deposit is purchased by or merged with another lending institution, the linked deposit shall be reissued to the acquiring or resulting institution, if all depository requirements are met. Should the linked deposit loan not be obtained by the resulting institution, then the linked deposit shall be returned to the comptroller. The department and the comptroller will allow the borrower 90 days to place the application with another eligible lending institution.

(h) A late payment on a loan by a borrower does not affect the validity of the linked deposit through the period of the fiscal biennium. Should a participant default on a loan and the lending institution proceed with collection by foreclosure, the linked deposit may, as determined by the comptroller, be returned to the comptroller.

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 November 13, 2002.

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Tracye McDaniel
Deputy Executive Director
Texas Department of Economic Development
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Proposal publication date: October 11, 2002
For further information, please call: (512) 936-0178

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.431

The State Board for Educator Certification (SBEC or Board) adopts an amendment to 19 TAC §230.431, relating to relating to certificate issuance procedures in general and specifically to an educator's maintaining a current mailing address with SBEC, without changes to the proposed text as published in the September 13, 2002, issue of the *Texas Register* (27 TexReg 8696) and will not be republished.

REASONED JUSTIFICATION FOR RULES AS ADOPTED:

The following is a summary of the factual basis for the rules as adopted that demonstrates a rational connection between the factual basis for the rules and the rules as adopted:

The Board amends 19 TAC §230.431 by adding new Subsection (c) to require certificate applicants and holders to maintain a current mailing address with SBEC. A certificate applicant or holder would have to notify SBEC of a new mailing address within 45 days of making a change.

SBEC adopts the amendment for the following reasons:

Renewal of Standard Certificates. Beginning in September 2004, the first Standard Certificates issued by SBEC will come up for renewal. Board rules require the Executive Director to develop procedures "to notify educators at least one year prior to the expiration of their renewal period." 19 TAC §232.830(a)(1). Thus, by September 2003 SBEC staff must begin notifying holders of the Standard Certificate that their renewal period is due to expire the following year. In addition, Board rules require staff to notify educators who do not comply with renewal requirements. *Id.*, §232.830(a)(4). To effectively implement these notification procedures, SBEC must start updating its database of mailing addresses for Standard Certificate holders and maintain current addresses. During a five-year renewal period, a fair number of Standard Certificate holders can be expected to change addresses.

Default Judgment Rule for Disciplinary Cases. When an educator accused of misconduct does not answer the Board's complaint (or petition) or does not appear for a hearing on the charges against him or her, SBEC's staff attorneys seek a default judgment. A default judgment allows the Administrative Law Judge and/or the Board or its designee to deem as admitted the staff's factual allegations against the accused educator and sanction his or her certificate without submitting further proof.

Procedural laws require SBEC to notify the educator of the allegations against him or her and when a hearing may be held on the charges. §§2001.051-2001.052, Government Code; 1 TAC §155.27; 19 TAC §§249.14(h), 249.16(c), 249.30. The rules authorize SBEC to serve such notice by U.S. certified mail, return receipt requested. Even though SBEC may not be able

to show the educator actually received the notice (*i.e.*, by producing a signed "green card"), a default judgment may still be entered if the notice was sent to the educator's last known address as shown by SBEC's records. 1 TAC §155.55(d); 19 TAC §249.30(b).

Requiring educators to maintain a current mailing address with SBEC would increase the likelihood that they would receive timely notice of a pending disciplinary proceeding against them before a default judgment affecting their certification could be entered.

Communication by SBEC with Educators. SBEC staff has important reasons to communicate with educators about matters related to their certification, as already shown above. Raising this need to the level of a general rule would impress educators and applicants with the importance of notifying SBEC of their current address. The public nature of the rulemaking process also helps broadcast the issue to the profession. Having a current address would help ensure delivery of initial or additional certificates. Some candidates' addresses change between the time they provide their addresses to their preparation programs upon admission and when the program recommends them for certification. About 550 certificates came back marked undeliverable by the U.S. Postal Service during FY 2001. SBEC also needs valid addresses to promptly notify individuals of errors that are sometimes made in issuing a certificate.

No comments were received regarding adoption of the proposed amendment.

Because no party submissions or proposals were received, an explanation of the Board's reasons for disagreement is not required.

The amendment is adopted under the following sections of the Education Code: §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, Education Code, in a manner consistent with that subchapter; and §21.041(b)(4), which requires SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

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 November 12, 2002.

TRD-200207379
William Franz
Executive Director
State Board for Educator Certification
Effective date: December 2, 2002
Proposal publication date: September 13, 2002
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

CHAPTER 51. PRACTICE AND PROCEDURE

SUBCHAPTER A. THE BOARD

22 TAC §51.3

The Texas State Board of Barber Examiners adopts amendments to §51.3 Administrative Fines. The amendments are pursuant to the recodification (Acts 1999, 76th Leg., Chapter 388, eff. Sept. 1, 1999) of the former Texas Barber Law, Texas Civil Statutes, Article 8401 - Article 8407a into the Texas Civil Statutes, and the subsequent amendments to Chapter 1601 (Acts 2001, 77th Leg. Chapters 246 and 1420, eff. Sept. 1, 2001), and to update references to the Texas Occupations Code as the authority to issue administrative fines for practice and procedure violations. The amendments are adopted without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register*.

No comments were received regarding the adoption of the rule.

The amendments are adopted under the Texas Occupations Code. Chapter 1601.151 which vests the Board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Occupations Code, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Occupations Code, Chapter 1601 and to ensure strict compliance with the Texas Occupations Code, Chapter 1601.

No other article or statute is affected by these amendments.

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 November 14, 2002.

TRD-200207458
Dr. Douglas A. Beran, PhD
Executive Director
Texas State Board of Barber Examiners
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER C. EXAMINATION AND LICENSING

22 TAC §51.59

The Texas State Board of Barber Examiners adopts new §51.59 Student Violation Prior to the Examination. The new rule provides that a student who has been issued a citation for a violation of the Texas Occupations Code. Chapter 1601 or rules of the Barber Board may not take the examination for licensure until final resolution of the citation. The new rule is adopted without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register*.

No comments were received regarding the adoption of the rule.

The new rule is adopted under the Texas Occupations Code. Chapter 1601.151 which vests the Board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and

ethics for all persons licensed or practicing under the provision of the Texas Occupations Code, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Occupations Code, Chapter 1601 and to ensure strict compliance with the Texas Occupations Code, Chapter 1601.

No other article or statute is affected by these amendments.

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 November 14, 2002.

TRD-200207459
Dr. Douglas A. Beran, PhD
Executive Director
Texas State Board of Barber Examiners
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 458-1091

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SUBCHAPTER I. DEFINITIONS

22 TAC §51.141

The Texas State Board of Barber Examiners adopts amendments to §51.141. Definitions. The amendments provide that (1) the use of any blade, drill, or cutting tool for the purpose of removing any or all corns or calluses is considered a medical practice and is prohibited and that (2) the possession or storage of any blade or cutting tool for the purpose as contemplated by the rule is prima facie evidence of use. The amendments are adopted without changes to the proposed text as published in the October 4, 2002, issue of the Texas Register.

No comments were received regarding the adoption of the rule.

The amendments are adopted under the Texas Occupations Code 1601.151 which vests the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

No other article or statute is affected by this amendment.

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 November 14, 2002.

TRD-200207460
Dr. Douglas A. Beran, PhD
Executive Director
Texas State Board of Barber Examiners
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 458-1091

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PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.5, §71.7

The Texas Board of Chiropractic Examiners adopts amendments to chapter 71 relating to applications and applicants for a chiropractic license, without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register,* (27 TexReg 9252) and will not be republished. The amendments to §71.5(b) delete the category of "candidate status" from the definition of "a bona fide reputable chiropractic school" and amendments to §71.7(a) allow otherwise eligible applicants to take the jurisprudence examination in their last semester of chiropractic college. The Texas Chiropractic Act, Occupations Code §201.302 and §201.303, requires an applicant for a chiropractic license to have attended a bona fide reputable chiropractic school. Section 201.302 sets out some requirements for eligible chiropractic schools. Rule 71.5(b) explains that a bona fide reputable chiropractic school is one that holds candidate status or has been accredited by the Council on Chiropractic Education (CCE). The CCE no longer utilizes "candidate status" in its accreditation process. Accordingly, the amendment to §71.5(b) deletes this reference for consistency with the CCE's procedures. Section 201.304(c) gives the board discretion to allow applicants to take the jurisprudence examination in their last semester of chiropractic college upon submission of satisfactory grades by the applicant. Section 71.7(a) currently does not allow for examination until an applicant has completed the last semester of chiropractic college and graduated. The amendment to §71.7(a) will allow an applicant to take the jurisprudence examination during their last semester upon proof of satisfactory grades. For the purposes of this section, satisfactory grades will be defined as a passing grade in all required courses for graduation. The amendment also states that the board will not issue a license until an applicant has submitted proof of completion of the last semester and graduation. Other revisions have been made to both sections to update references to the Chiropractic Act and for consistency in grammar and format.

No comments were received regarding adoption of the rules.

The amendments are adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

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 November 14, 2002.

TRD-200207433

Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 305-6709

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CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.7

The Texas Board of Chiropractic Examiners adopts amendments to §73.7(a), relating to approved continuing education courses, without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register* (27 TexReg 9253) and will not be republished. The amendment adds international professional associations to the board's list of approved entities that may provide continuing education courses for the board's continuing education requirements. The Texas Chiropractic Act, Occupations Code §201.356(a), requires the board to evaluate and approve continuing education courses for licensed chiropractors. As part of this responsibility, the board maintains a list of colleges, societies and associations whose courses will be accepted for compliance with the board's continuing education requirements. Currently, international associations are not approved by the board for the purpose of continuing education. International professional associations are recognized by private accreditation entities as providing quality continuing education courses. Courses from international associations may be appropriate for the continuing education needs of licensees, and these associations should be included on the board's list of approved sponsors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the act, and §201.356, which the board interprets as authorizing it to adopt rules to develop a process to evaluate and approve continuing education courses.

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 November 14, 2002.

TRD-200207434
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 305-6709

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CHAPTER 79. PROVISIONAL LICENSURE

22 TAC §79.1

The Texas Board of Chiropractic Examiners adopts amendments to §79.1(a)(2), relating to provisional licensure without changes to the proposed text as published in the October 4, 2002 issue of the *Texas Register* (27 TexReg 9253) and will not be republished. The amendment adds Part IV of the National Board of Chiropractic Examiners (NBCE) Examination to the examination requirement for a provisional license. The Chiropractic Act, Occupations Code, §201.309(a)(2), requires that an applicant for provisional licensure either have passed a national examination or another examination recognized by the board. Under §79.1(a)(2), the board currently requires an applicant take Parts I, II, III, and Physiotherapy of the NBCE Examination (a national test) or the NBCE SPEC Examination. An applicant for licensure for an original license or by examination, on the other hand, must take Parts I through IV and Physiotherapy of the NBCE Examination. The examination requirements for provisional licensing, at a minimum, are intended to mirror the examination requirements for licensure by examination. As an option, the board has recognized the SPEC test and will allow an out-of-state chiropractor, otherwise qualified, to take the SPEC in satisfaction of the examination requirement for a provisional license. The purpose of this proposal is to bring §79.1(a)(2) into line with the requirements for an original license by examination by adding Part IV.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.309(a)(2), which the board interprets as authorizing it to adopt rules relating to examinations recognized by the board for provisional licensure.

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 November 14, 2002.

TRD-200207435
Sandy Grome
Director of Licensure
Texas Board of Chiropractic Examiners
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 305-6709

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.1

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.1, Definitions, without changes to the proposed text as published in the September 27, 2002, issue of

the *Texas Register* (27 TexReg 9080). The text will not be republished.

These amendments add the terms "appraisal process" and "workfile" to the TALCB rule definition. Concurrent proposed amendments to §153.15, Experience Required for Certification or Licensing, use the two terms in paragraph (f)(2).

The Foundation Appraiser Coalition of Texas, Inc. (FACT) provided written comments at the November 8, 2002, Board meeting. FACT's comments were supportive of the amendments. No other comments were received.

The amendments are proposed under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Vernon's Texas Civil Statutes, Article 6573a.2), which provides the board with authority to adopt rules.

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 November 14, 2002.

TRD-200207454
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: January 1, 2003
Proposal publication date: September 27, 2002
For further information, please call: (512) 465-3953

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22 TAC §153.15

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.15, Experience Required for Certification or Licensing, without changes to the proposed text as published in the September 27, 2002, issue of the *Texas Register* (27 TexReg 9082). The text will not be republished.

These amendments bring the experience requirements into compliance with the current Appraisal Qualifications Board's Real Property Appraiser Qualifications Criteria and add additional specificity to acceptable real estate appraisal experience for certification or licensure. Concurrent adopted amendments to §153.1, Definitions, add definitions for the terms "appraisal process" and "workfile," as used in this title.

The Foundation Appraiser Coalition of Texas, Inc. (FACT) provided written and oral comments at the November 8, 2002, Board meeting. FACT's comments were supportive of the amendments but they had questions concerning interpretation which were answered at the meeting. No other comments were received.

The amendments are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Vernon's Texas Civil Statutes, Article 6573a.2), which provides the board with authority to adopt rules.

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 November 14, 2002.

TRD-200207456
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: January 1, 2003
Proposal publication date: September 27, 2002
For further information, please call: (512) 465-3950

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22 TAC §153.17

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.17, Renewal of Certification, License, or Trainee Approval, without changes to the proposed text as published in the September 27, 2002, issue of the *Texas Register* (27 TexReg 9083). The text will not be republished.

These adopted amendments help facilitate on-line renewals through TexasOnline. Adopted amendments to §153.17(d) will clarify that renewals are acceptable for processing when received by the board, with proper fees, though the U.S. Postal Service, an overnight delivery service, or through TexasOnline. New subsection (e) provides that appraiser continuing education (ACE) may be submitted on an ACE Report form, provides for penalties for furnishing false or misleading information, requires licensee to keep copies of ACE transcripts or course completion certificates for five years, provides for verification audits of claimed education, and provides for penalties for non-compliance. Current subsections (e)-(g) were renumbered (f)-(h).

The Foundation Appraiser Coalition of Texas, Inc. (FACT) provided written comments at the November 8, 2002, Board meeting. FACT's comments were supportive of the amendments. No other comments were received.

The amendments are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Vernon's Texas Civil Statutes, Article 6573a.2), which provides the board with authority to adopt rules.

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 November 14, 2002.

TRD-200207457
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: January 1, 2003
Proposal publication date: September 27, 2002
For further information, please call: (512) 463-3950

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22 TAC §153.18

The Texas Appraiser Licensing and Certification Board adopts an amendment to §153.18, Appraiser Continuing Education, without changes to the proposed text as published in the September 27, 2002, issue of the *Texas Register* (27 TexReg 9085). The text will not be republished.

This amendment deletes subparagraph (d)(2)(K) to remove unnecessary language which currently requires copies of transcripts of course completion certificates to be submitted in order to renew a certification or license. Concurrent adopted amendments to §153.17 provide for an ACE Report form and acceptable ACE verification to facilitate renewals through TexasOnline.

The Foundation Appraiser Coalition of Texas, Inc. (FACT) provided written comments at the November 8, 2002, Board meeting. FACT's comments were supportive of the amendment. No other comments were received.

The amendments are proposed under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5 (Vernon's Texas Civil Statutes, Article 6573a.2), which provides the board with authority to adopt rules.

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 November 14, 2002.

TRD-200207455
Renil C. Liner
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: January 1, 2003
Proposal publication date: September 27, 2002
For further information, please call: (512) 465-3950

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PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 235. LICENSING
SUBCHAPTER A. APPLICATION FOR LICENSURE

22 TAC §235.3

The Board of Vocational Nurse Examiners adopts an amendment to §235.3, relating to Qualifications for Licensure by Examination without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9533) and will not be republished.

The adopted amendment will address new addition to rule to accommodate licensure of vocational/practical nurses educated in foreign countries as required by multi-state licensure compact, and to assure English-speaking competency for graduates of foreign nursing programs.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207358
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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22 TAC §235.6

The Board of Vocational Nurse Examiners adopts an amendment to §235.6, relating to Applications for Licensure by Endorsement without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9534) and will not be republished.

The adopted amendment will accommodate endorsement of licensees from compact states who hold inactive licenses, but reside in Texas. Compact rules do not allow holding a license in both states. Consistency with proposed changes. To delete employment inference. Should only address licensure requirements. Rule was incorrectly written when implemented.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207357
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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22 TAC §235.12

The Board of Vocational Nurse Examiners adopts an amendment to §235.12, relating to failure to appear for scheduled examination without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9534) and will not be republished.

The adopted amendment will address submitting another application is not required since implementation of computerized testing. If candidates miss a testing session, they are only required to repay the test service fee, not the licensure fee.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207359
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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22 TAC §235.17

The Board of Vocational Nurse Examiners adopts the repeal of §235.17, relating to temporary permits without changes to the proposal as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9535) and will not be republished.

This rule will be proposed with new language.

No comments were received relative to the adoption of this rule.

The repeal is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207361
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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22 TAC §235.17

The Board of Vocational Nurse Examiners adopts new §235.17, relating to Temporary Permits without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9535) and will not be republished.

The proposed new language will reorganize the rule for clarity and to include a specific time frame for temporary permits for examination candidates not previously included since implementation of computerized testing.

No comments were received relative to the adoption of this rule.

The new rule is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207360
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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SUBCHAPTER D. ISSUANCE OF LICENSES

22 TAC §235.48

The Board of Vocational Nurse Examiners adopts an amendment to §235.48, relating to reactivation of a license without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9536) and will not be republished.

The amendment will address four years is being used to restore rule as written prior to 1995 when the "five year rule" was implemented; to more closely align rule with licensure renewal cycles; and to allow facilitation of data migration with the BNE licensure system.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207362
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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CHAPTER 237. CONTINUING EDUCATION

SUBCHAPTER B. CONTINUING EDUCATION

22 TAC §237.19

The Board of Vocational Nurse Examiners adopts an amendment to §237.19, relating to relicensure process without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9536) and will not be republished.

The amendment will delete paragraphs (4) and (5). This rule in the Continuing Education section mirrors Licensing §235.48, and is a redundancy.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207363
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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CHAPTER 239. CONTESTED CASE PROCEDURE

SUBCHAPTER D. INFORMAL DISPOSITIONS

22 TAC §239.41

The Board of Vocational Nurse Examiners adopts an amendment to §239.41, relating to informal conference without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9537) and will not be republished.

The amendment will include new language to subsection (d), present language conflicts with §239.47 (a). The Board may enter a default order if Respondent/Applicant fails to attend an Informal Conference.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207365
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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SUBCHAPTER E. REINSTATEMENT PROCESS

22 TAC §239.64

The Board of Vocational Nurse Examiners adopts an amendment to §239.64, relating to board action possible upon reinstatement without changes to the text as published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9538) and will not be republished.

The amendment will be consistent with §235.48 - Reactivation of a License and to coincide and agree with the proposed changes to §235.48.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151(b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purpose of the law.

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 November 12, 2002.

TRD-200207364
Terrie Hairston, RN, CHE
Executive Director
Board of Vocational Nurse Examiners
Effective date: December 2, 2002
Proposal publication date: October 11, 2002
For further information, please call: (512) 305-7653

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.83

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.83 concerning Firm Names without changes to the proposed text as published in the October 11, 2002 issue of the *Texas Register* (27 TexReg 9538).

The amendment is necessary to comply with the statutory language and will bring the Board's rule into compliance.

The amendment will function by complying with and containing the correct statutory language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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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Amanda G. Birrell
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Texas State Board of Public Accountancy
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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §523.71

The Texas State Board of Public Accountancy (Board) adopts the repeal of §523.71 concerning Application as a Sponsor without changes to the proposed text as published in the October 11, 2002 issue of the *Texas Register* (27 TexReg 9539).

The repeal makes room for a completely re-written §523.71 to be adopted.

The repeal will function by allowing for a completely re-written rule §523.71 to take its place.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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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22 TAC §523.71

The Texas State Board of Public Accountancy (Board) adopts new rule §523.71 concerning Board Contracted Continuing Professional Education Sponsors with three minor changes to the proposed text as published in the October 11, 2002 issue of the *Texas Register* (27 TexReg 9540). The first change to the rule is in the caption of the rule which has been changed from "Board Contracted CPE Sponsors" to read "Board Contracted Continuing Professional Education Sponsors" the second change is in subsection (b) where the word "shall" has been deleted. The third change is in subsection (f) where the word "that" has been deleted from the second sentence. These changes are not substantive changes.

The new rule allows the Board to enter into contracts with approved Continuing Professional Education ("CPE") sponsors to present CPE courses.

The new rule will function by increasing revenue from CPE sponsors that can be used to defray the costs of processing applications and renewals and the costs of periodic review of the Sponsor's CPE courses.

The Board received one comment on this rule. The Commenter said the Board may promulgate rules regarding the program of study that the Board will accept; however, the Board only has the authority to accept or reject a CPE *course* when the *course* is tendered to the Board for approval by a CPA. The Commenter said the Board lacks the authority to pre-approve CPE courses because a CPE class might contribute to the competence of one CPA but not to another CPA's competence. The Commenter said the Board lacks the statutory authority to charge CPE providers a fee and cites Attorney General Opinions DM 219 and JC 416 to support this contention.

Section 901.411(b) states that "The board may recognize a continuing professional education course only if the course directly contributes to the license holder's professional competence." The purpose of this subsection is to plainly state the basic requirement for approval of CPA courses- direct contribution to professional competence. The subsection was neither written as nor intended to be any sort of limitation on the Board's pre-approval of CPE courses. Also, statutory language such as this is normally intended to apply generally, not specifically, allowing agencies to flesh out the statute by promulgating specific rules. CPAs who are considering which CPE courses to select to satisfy the CPA's mandatory CPE requirements require guidance as to which CPE courses will be accepted by the Board. In addition to tuition or registration fees, CPE classes require CPA's absence from employment or personal life, travel time and maybe travel expenses. Pre-approval of continuing professional education courses is a regular occurrence in other state licensing boards such as the State Bar.

The Board has express statutory authority to conduct the program outlined in the Rule. The Board's statutory authority to contract with CPE sponsors and to charge CPE sponsors a fee is contained in Section 901.151(c) which authorizes the Board to "… contract for, and accept money … from any source … to administer (the Public Accountancy Act)." The Board is also authorized "to enter into contracts and do all other acts incidental to those contracts…" by Article 8911, Tex.Rev.Civ.Stat. (Vernon's 2001).

Attorney General Opinion DM 219 is inapplicable. The opinion involved a licensing board that attempted to charge a fee by rule. The opinion said the licensing board could not charge the fee because it lacked statutory authority. As noted above, the Board has the statutory authority to impose a fee.

Attorney General Opinion JC 416 is also inapplicable. The issue was whether dirt bikes were motorcycles, which were subject to regulation. The opinion concluded that dirt bikes were not motorcycles and that they were not subject to regulation. The opinion neither addressed nor invalidated the agency's regulation of motorcycles.

The new rule is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon's 2001) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

§523.71. Board Contracted Continuing Professional Education Sponsors.

(a) The board may contract with any sponsor of continuing professional education (CPE) programs to become a board contracted CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its contractual obligations to the board and that its programs will conform to the board's standards as outlined in:

(1) §523.21 of this title (relating to Program Description Standards);

(2) §523.22 of this title (relating to Instructors);

(3) §523.23 of this title (relating to Program Sponsors Other Responsibilities);

(4) §523.24 of this title (relating to Learning Environment);

(5) §523.25 of this title (relating to Evaluation);

(6) §523.26 of this title (relating to Program Time Credit Measurement);and

(7) §523.32 of this title (relating to Board Rules and Ethics Course), (if applicable).

(b) The board will also require that each organization desiring to become a board contracted CPE sponsor agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the Board or to the Board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization desiring to become a board contracted CPE sponsor must submit an application on contract forms provided by the board. The application must be complete in all respects and shall include the contract payment of $120 for each twelve month period of the contract.

(d) To implement the program initially, sponsors previously registered with the board will be assigned an initial contract term based on the month of their current registration. The board will not prorate the contract payment for an organization for less than one year. Upon renewal in the second and succeeding years, the contract amount may be increased to cover the costs of review of individual courses.

(e) Board staff will review each application and notify the applicant of its acceptance or rejection. Accepted applicants will be assigned a sponsor number and can represent that they are a board contracted CPE sponsor. An acceptance in any given year shall not bind the board to accept a sponsor in any future year.

(f) After the contract has been accepted, the board, in its sole and exclusive discretion, may determine that a contracted sponsor is not in compliance with the contract. The board will provide the contracted sponsor reasonable notice it may make such a determination and shall provide the contracted sponsor a reasonable opportunity to respond to the facts which lead to the board determination. When the board has made a determination that a contracted sponsor is not in compliance with the contract, the board may request that the CPE sponsor make changes to meet board rules or the contract or the board may also terminate the contract. The contract amount shall not be prorated or refunded if the contract is terminated.

(g) All contracts with board contracted CPE sponsors may be renewable not less than annually by completion of a form provided by the board. At least 30 days before the expiration of the contract, the board will send notice of the impending expiration of the contract as a CPE sponsor.

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 C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.102

The Texas Parks and Wildlife Commission adopts new §65.102, concerning Permits to Trap, Transport, and Transplant Game Animals and Game Birds (Triple T permits), with changes to the proposed text as published in the September 27, 2002, issue of the *Texas Register* (27 TexReg 9140). The proposal, as published, provided that the Texas Parks and Wildlife Department (the department) would not issue any permits to trap, transport

and transplant white-tailed deer or mule deer. The change provides that the department will not issue any permits to trap, transport and transplant white-tailed dear or mule deer unless a specified number of adult deer at the trap site have been tested for Chronic Wasting Disease (CWD), a transmissible spongiform encephalopathy that is passed from deer to deer an is invariable fatal. The change also includes a nonsubstantive clarification that all deer taken for testing be taken under existing applicable law. Therefore, §65.102, as adopted, creates a mechanism under which Triple T permits could be issued, and replaces the proposed absolute cessation of the issuance of permits. This change was made as a result of public comment and input received from the department's Triple T advisory group.

The new §65.102 is necessary because of concerns related to Chronic Wasting Disease (CWD), which has been detected in free-ranging deer populations in other states and Canada. Because CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. Although no deer have tested positive for CWD in Texas, the department cannot categorically discount the presence of the disease in the state. Therefore, the department must address any and all threat potentials for the introduction, transmission, or spread of CWD in order to discharge its statutory duty to manage and protect wildlife resources (in this case, deer) in this state.

Free ranging white-tailed deer and mule deer have been found to be infected with CWD in Wisconsin, New Mexico, Illinois, South Dakota, Nebraska, Wyoming, and Colorado and within confined infected elk and white-tailed deer facilities in Oklahoma, Colorado, Wyoming, Montana, South Dakota, Nebraska, Minnesota, and Wisconsin. Each new area infected is a highly significant distance from other known infected herds, which indicates that agents other than natural dispersion are involved (e.g., trapping and transplanting operations). For many years the department has authorized both the importation of deer for release into the wild and the translocation and release of deer that may have been in contact with imported deer; therefore, any area of the state may be at risk, however slight, which cannot be categorically be ruled out at the present time. Although measures were recently put in place by the Texas Animal Health Commission (TAHC) to ensure the health of white-tailed deer and mule deer imported into Texas, animals imported prior to the imposition of those measures remain part of the Texas deer population and could conceivably have been infected with CWD prior to importation.

Any deer trapped and transplanted within Texas conceivably could have been in contact with a CWD-positive deer prior to being trapped and transplanted and could thus be a vector for introducing the disease to additional areas of the state. The continued transport of deer could potentially further spread the disease. Therefore, the department has determined that the practice of trapping and transplanting deer is a potential mechanism for the spread of CWD.

As a result of this determination, the department, in conjunction with TAHC, has developed constructed a risk-assessment model, based on historic data identifying the origins and destinations of deer imported to Texastrans located under Triple T permits, to identify the regions and specific counties which could be statistically expected to be at the greatest risk of harboring CWD-positive deer, if indeed the disease exists in Texas populations. The department stresses that the risk assessment is aimed at identifying the counties of highest risk and in no way is meant to suggest that counties not identified as high-risk are in no danger of harboring deer that may be infected with the disease.

The risk assessment is based on the number of white-tailed deer, mule deer, and elk legally imported into a county, integrated with the number of deer already residing in the county. This assessment identified 64 counties with significant risk. During the past 2 years, deer trapped in 15 of these 64 counties were transported to and released in 34 counties of this state. It is clear that one of the impacts of these activities is to confound the accuracy of any risk assessment based on importation alone. Therefore, restricting the further transport of white-tailed deer and mule deer will, in addition to reducing the potential for transmission of the disease, increase the probability of characterizing the status of the disease on the landscape and simply the identification of the potential source of the disease.

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

Since the inception of the Triple T Permit Program in 1993, approximately 38,173 white-tailed deer have been authorized for transplanting. These deer have been trapped in 44 counties and released into 66 counties. In 2001, the department issued 90 permits to relocate 4,348 deer.

The risk assessment is based on the number of white-tailed deer, mule deer, and elk legally imported into an county, integrated with the number of deer already residing in the county. This assessment identified 64 counties with significant risk. During the past 2 years, deer trapped in 15 of these 64 counties were transported to and released in 34 counties of this state. It is clear that one of the impacts of these activities is to confound the accuracy of any risk assessment based on importation alone. Therefore, restricting the further transport of white-tailed deer and mule deer will, in addition to reducing the potential for transmission of the disease, increase the probability of characterizing the status of the disease on the landscape and simply the identification of the potential source of the disease.

Accordingly, the rule implements a scientifically valid, epidemiologically prudent testing and identification protocol that affords the department the ability to detect CWD and prevent its spread via the vector of Triple T activities, while at the same time preserving the ability of the regulated community to continue to trap and transplant deer. The department's actions to deal with the threat of CWD have been the result of a collaborative effort with the Texas Animal Health Commission, which supports the rule as amended.

The rule will function by prohibiting the issuance of a Triple T permit, unless a sample of deer from the trap site has been to be tested for CWD Chronic Wasting Disease on any property serving as a trap site for relocated deer. The rules sets forth the minimum sample size, requires the tested sample to be tested 100% negative, requires the test to be performed by the Texas Veterinary Medical Diagnostic Laboratory, and stipulates that all transported deer be uniquely marked prior to release.

The department received 45 comments opposing the adoption of the rule as proposed. Two of those commenters supported adoption of the rule as amended. Twenty-six of the commenters opposing adoption of the rule as proposed did so without stating specific reasons for opposition. Seventeen commenters stated specific reasons for opposing the adoption of the rule as proposed. Those comments are addressed as follows, with the number of commenters indicated in parentheses, if the comment was received from more than one commenter.

COMMENT: If a deer tests positive for CWD, the landowner could be held legally liable by surrounding landowners.

AGENCY RESPONSE: The agency disagrees with the comment. There are no known legal liabilities associated with the veterinary health of free-ranging wildlife. No changes were made as a result of the comment. Any effort to hold a landowner liable would result from the existence of CWD, regardless of whether deer had been tested for the disease. No changes were made as a result of the comment.

COMMENT: The rule singles out the Triple T program. Why aren't deer being sampled everywhere in the state?

AGENCY RESPONSE: The agency disagrees. The Triple T program is not being singled out. The department has addressed the same concerns in other programs, such as the Scientific Breeder program. Further, the department is sampling deer from department lands, as well as from volunteer private lands. The rule addresses a program that has been determined to be a potential vector for the spread of disease. No changes were made as a result of the comment.

COMMENT (6): The department should let the program continue to operate as is, because thousands of deer have already been moved and the disease has not been detected.

AGENCY RESPONSE: The department disagrees. Actions taken by the department in the last year constitute a comprehensive effort to determine, to the greatest degree of confidence possible, that CWD does not exist in this state. Only after the department has conducted a scientifically valid campaign to detect the disease will there be a sufficient level of statistical confidence to state the probable status of the disease in the state. No changes were made as a result of the comment.

COMMENT: The rule will cause property values to decline if CWD is detected.

AGENCY RESPONSE: The department disagrees. The presence or absence of testing does not affect the presence or absence of CWD or the effect of the discovery of CWD on property values. If CWD is present, the department believes that detection and containment are preferable to the unimpeded spread of the disease, which would eventually be detected as increasing numbers of animals were infected. No changes were made as a result of the comment.

COMMENT (3): The current testing protocols are sufficient; the expansion of testing to include Triple T deer is going too far.

AGENCY RESPONSE: The department disagrees. The department has a duty to protect and conserve wildlife resources in this state; therefore, all reasonable measures to discharge that duty must be considered, especially when weighed against the possible results of failure to act responsibly. No changes were made as a result of the comment.

COMMENT (7): The suspension of Triple T permit issuance will cause threats to public safety in communities that use Triple T permits to remove deer that have become nuisances and traffic hazards.

AGENCY RESPONSE: The agency disagrees in part. The department's statutory authority does not extend to The rule as adopted allows for the issuance of Triple T permits to control deer overpopulation. In addition, there are a variety of measures available to control deer populations, including lethal control and the construction of physical barriers such as fences. No changes were made as a result of the comment.

COMMENT: The department did not consider the fiscal impact of the cessation of Triple T permit issuance on communities using the permits as an inexpensive way to remove deer.

AGENCY RESPONSE: The agency disagrees. The Administrative Procedure Act requires the department to prepare a fiscal note that must estimate the additional cost to the state and to local governments expected as a result of enforcing or administering the rule; estimate the reductions in costs to the state and to local governments as a result of enforcing or administering the rule; estimate the loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and, if applicable, stating that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments. Since the department is responsible for both enforcement and administration of the rule, the department maintains there are no fiscal implications to local governments related to enforcing or administering the rule. Similarly, the rule does not exert any effect on local revenues. The department also notes that although Triple T permits are not mandatory, they are an attractive option for communities with deer population issues, and to that end, the rule as adopted does allow for the issuance of permits. No changes were made as a result of the comment.

COMMENT: The rule is unfair to people who already have Triple T permits approved.

AGENCY RESPONSE: The agency disagrees. The rule will not be applied retroactively. The rule will not affect permits that have already been issued. All approved permits will be valid for use. No changes were made as a result of the comment.

COMMENT: The proposal makes no mention of testing requirements or protocols.

AGENCY RESPONSE: The agency agrees. The proposed text made no mention of testing because it contemplated an outright prohibition on the movement of deer. The rule as amended contains testing requirements which must be met before deer may be moved. Although no changes were made as a result of the comment, a testing requirement is imposed in the adopted section.

COMMENT: There is no correlation between Triple T permits and CWD testing being conducted by the department.

AGENCY RESPONSE: The agency disagrees. The rule as amended contains testing requirements which must be met before deer may be moved. No changes were made as a result of the comment.

COMMENT (2): There is no point in testing deer in-state, because CWD is introduced via deer imported from out-of-state.

AGENCY RESPONSE: The agency disagrees. Deer have been imported to Texas for many years prior to this rulemaking, and many of those deer were liberated to the wild or kept in proximity to other deer that were liberated to the wild. The department

has no way of knowing if any liberated deer were infected with CWD and thus no assurance that infected deer have not come into contact with other deer in any part of the state, which, given the unknowns of incubation and transmissibility, means that the disease could exist in wild populations anywhere in the state at the current time. No changes were made as a result of the comment.

COMMENT (2): The agency is acting hastily.

AGENCY RESPONSE: The agency disagrees. CWD has been detected in free-ranging herds in numerous states and Canadian provinces. The appearance of CWD in those places is almost certainly due to practices and activities identical to those taking place in Texas, and the department strongly believes that given the steady progression of discovery of CWD elsewhere that promptness of action is not only prudent, but imperative. No changes were made as a result of the comment.

COMMENT: Low-risk and no-risk counties should be open to trapping activities.

AGENCY RESPONSE: The department disagrees. Although risk assessment characterizes a range of risk probabilities, its primary function is to identify highest risk locales to enable focused efforts to detect CWD where it is statistically most likely to occur. However; the designation of low-risk and no-risk cannot be construed to categorically eliminate such areas from the possibility of harboring a CWD-positive animal. No changes were made as a result of the comment.

COMMENT (3): The Triple T permit is an important management tool that should not be eliminated.

AGENCY RESPONSE: The agency agrees. The rule as adopted does not contemplate elimination of Triple T activities, merely a more structured approach that will remain in place until the threat potential of CWD to Texas deer can be scientifically ascertained and characterized. The department also points out that given the fact that 90 permits were issued in 2001 for the entire state, the use of Triple T permits is not widespread as a management tool; therefore; therefore, the rule, as adopted is not expected to affect the majority of Texas land owners. In addition, the potential impact of the disease justifies a tempered approach to permit issuance. No changes were made as a result of the comment.

COMMENT: There is no reason to curtail Triple T activities when so little is known about CWD.

AGENCY RESPONSE: The agency disagrees. The very fact that CWD is little understood is cause for caution, and the department strongly believes that it would be remiss in discharging its statutory duty were it to discount the threat on the basis that the disease is not well understood. No changes were made as a result of the comment.

COMMENT: The department should continue to approve Triple T applications that would move deer to high-fenced ranches, since deer behind high fences are segregated from wild deer.

AGENCY RESPONSE: The agency disagrees. The movement of one infected deer into any environment carries the potential to infect deer within that environment. There is also the risk that deer could be inadvertently or intentionally released to the wild from a high-fenced environment. No changes were made as a result of the comment.

COMMENT (5): The regulated community was not given adequate notice of opportunity to comment on the proposed rule.

AGENCY RESPONSE: The agency disagrees. The rulemaking process prescribed by the Administrative Procedure Act was scrupulously adhered to by the department. In addition, four public meetings were held to discuss the proposal and all permittees were contacted by the department and advised of public hearings and their right to submit comments. Furthermore, as noted above, the Triple T advisory committee, consisting of land owners, trappers, department personnel and members of stakeholder associations, was convened. The department further maintains that the intense interest generated by the CWD issue over the last year and the fact that a number of associations and groups representing the regulated community have been continuously included in all aspects of the department's decision-making process makes it highly unlikely that any interested person has been deprived of their right to comment. Furthermore, as noted above, the Triple T advisory committee, consisting of land owners, trappers, department personnel and members of stakeholder associations, was convened. No changes were made as a result of the comment.

COMMENT: The Triple T permit is the only tool available to communities with deer problems.

AGENCY RESPONSE: The agency disagrees. There are several remedies to deer overpopulation, including lethal solutions (depredation permits and lawful hunting) and the construction of physical barriers. The department also points out that certain parts of Texas are home range for some of the largest populations of free-ranging deer in the world; thus, the presence of deer, is to some extent, inevitable. No changes were made as a result of the comment.

COMMENT: Stopping Triple T permits is unnecessary, since infected deer will die anyway.

AGENCY RESPONSE: The agency disagrees. First, infected deer will inevitably have come into contact with other deer, leading to progression of infection within any population. Second, the economic impact of hunting in Texas is valued at well over a billion dollars per year, and the confidence of hunters that they are hunting healthy animals is of paramount concern. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the rule as proposed.

The Texas Animal Health Commission, the Texas Wildlife Association and the City of Lakeway supported adoption of the rule as adopted.

The Texas Deer Association and the City of Hollywood Park opposed adoption of the rule as proposed and as adopted.

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

§65.102. Limitation of Applicability.

(a) Until this section is repealed, no permits to trap, transport, and transplant white-tailed deer or mule deer shall be issued by the department unless a sample of adult deer from the trap site equivalent to

10% of the number of deer to be transported has been tested and certified 100% negative for chronic wasting disease by the Texas Veterinary Medical Diagnostic Laboratory.

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

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

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

(b) Nothing in this section authorizes the take of deer. The take of deer for the purposes of this section shall be in accordance with applicable laws and regulations.

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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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (board) adopts amendments to 31 TAC §363.2 and §363.502 and new §363.510 concerning Financial Assistance Programs and projects funded from the Economically Distressed Areas Account without changes to the proposed text as published in the October 4, 2002 issue of the *Texas Register* (27 TexReg 9285) and will not be republished. Amendments to §363.2 and §363.502 will update definitions. New §363.510, Financial, Managerial, and Technical Training Requirements, creates a new condition pursuant to which financial assistance for projects funded from the Economically Distressed Areas Account, authorized by Chapter 17, Subchapter K of the Texas Water Code, may be provided. The changes are intended to implement the provisions of Senate Bill 649 which authorized the board to require the governing board and management staff of political subdivisions that apply for or receive financial assistance through the economically distressed areas program to take training to insure the project will meet program requirements or remain financially viable.

Amendment to §363.2 replaces Texas Natural Resource Conservation Commission with the agency's new name Texas Commission on Environmental Quality. New paragraph (7) is adopted to existing §363.502, Definitions of Terms, to define the term "operating entity" as the individuals that serve on the governing body of the political subdivision which has applied or is receiving financial assistance from the economically distressed areas program or the individuals that are employed by the political subdivision to perform the financial, managerial, or technical tasks on behalf of the political subdivision. This definition is necessary to insure that the rule requirements relating to training will address the individuals that make and implement the decisions for the political subdivision.

New §363.510, Financial, Managerial, and Technical Training Requirements, is added to the chapter. New §363.510(a) identifies the time at which the board will determine whether to require an operating entity to take training, which are the times authorized by Senate Bill 649 and therefore the only times at which the board can make the determination to require training. New subsection (b) implements the provisions of Senate Bill 649 that authorize the board to require training of the operating entity based on its own assessment or based on an assessment of the Texas Commission on Environmental Quality (commission), formerly the Texas Natural Resource Conservation Commission.

Subsection (b) also identifies the elements that an assessment by the executive administrator must include. First, the executive administrator will review documentation submitted with the particular request or application of the political subdivision and any other documentation or information that may be available regarding the compliance of the political subdivision with applicable statutes, regulations, or the terms and conditions of bonds, loan agreements or grant agreements. The assessment provided to the board by executive administrator will include a summary of the information reviewed by the executive administrator. By requiring this summary, the board and the applicant will be informed of the information relied on by the executive administrator in making the assessment. This will allow the board to be informed of the scope of the review and allow the applicant the opportunity to insure that all information that it deems appropriate for the assessment has been included or to request that additional information be included in the assessment or be considered by the board as it evaluates the assessment. This new subsection also requires that an assessment prepared by the executive administrator will include the identification of any lacking financial, managerial, or technical capacity of the operating entity, the basis for the conclusion, the training that will improve the lacking capacity, and the positions on the operating entity that will be required to take the training. The identification of the capability that the operating entity lacks is important in determining the kind of training that will provide the capability to the operating entity. The subsection requires that the assessment include the identification of the reasons for the determination that a capability is lacking to allow the board and the applicant to consider the information that resulted in the recommendation by the executive administrator.

New §363.510(c) provides that the board may disapprove a requested action if the applicant lacks adequate financial, managerial, or technical capability, postpone the response to the request until such time as the political subdivision obtains the necessary financial, managerial, or technical capability as identified by the board, approve the action conditioned on the political subdivision obtaining the necessary financial, managerial, or technical capability as identified by the board, approve the requested action without condition, or take other action that the board determines is appropriate based on the information that is has available to it. This provision identifies the full range of actions that the board may take in response to an application or other requested action. If the board determines that training is required, the board must identify the capability that must be addressed and the curriculum that will address the deficiency. This provision insures that if the board requires an action by the applicant, the board will also

identify the process necessary for compliance and the intended result. This subsection also identifies the particular steps that are required of the political subdivision if the board requires training of the operating entity of the political subdivision. This provision allows the political subdivision to either choose a training provider that has been identified by the board or choose another training provider. This provision allows the political subdivision to make a choice because the political subdivision may have information regarding training providers that the board may not have in which event the board is willing to review that information.

New §363.510(d) establishes the procedure of the board to identify entities that can provide financial, managerial, and technical training for water or wastewater utility providers. This provision allows the board to pre-approve training courses that will address common capability deficiencies so that training can be provided to the political subdivisions that need the training as expeditiously as possible.

There were no comments received on the proposed amendments and new section.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

The amendment is adopted under the authority of the Texas Water Code, §6.101 and §16.342.

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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Suzanne Schwartz
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Texas Water Development Board
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SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS
DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.502, §363.510

The amendments and new section are adopted under the authority of the Texas Water Code, §6.101 and §16.342.

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

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§371.2, 371.21, 371.25, and 371.26 concerning the Drinking Water State Revolving Fund program without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register* (27 TexReg 9287) and will not be republished. The amendments will update a definition and reduce the time in which applicants for funding must submit an application for assistance and receive a commitment for financial assistance.

The board adopts §371.2 concerning Definition of Terms. The amendment to §371.2 will update the definition of "Commission" from the "The Texas Natural Resource Conservation Commission" to "The Texas Commission on Environmental Quality."

Amendments are adopted to §§371.21, 371.25, and 371.26 concerning the Criteria and Methods for Distribution of Funds. The amendments to §§371.21, 371.25, and 371.26 will reduce the time in which applicants for funding from the Drinking Water State Revolving Fund (DWSRF) must submit an application for assistance and receive a commitment for financial assistance.

Under the current rules a funding line is drawn and all potential applicants above the funding line are notified of the availability of funds and are invited to submit applications. Communities with public water system projects must submit applications for assistance within four (4) months and must receive a commitment within seven (7) months from the date of invitation. If all available funds are not committed within seven (7) months after the date of invitation, all applications which have not received commitments will be returned and all potential applicants who have not submitted applications, incomplete applications or complete applications will be moved to the bottom of the priority list. The funding line will then be re-drawn and the executive administrator will again notify all potential applicants above the funding line of the availability of funds.

Applications from eligible disadvantaged communities and private applicants also must be submitted within four (4) months and must receive a commitment within seven (7) months from the date of invitation. However, the funding line is re-drawn after four (4) months from the date of invitation if all available funds are not committed.

The amendments to §§371.21, 371.25, and 375.26 will reduce the time in which all applicants must submit an application for assistance and receive a commitment. Under the amendments, all applicants will now be required to submit an application within three (3) months and receive a commitment within six (6) months from the date of invitation. Thus, for public water system applicants, the funding line will now be re-drawn after six (6) months from the date of invitation if all available funds are not committed. For eligible disadvantaged communities and private applicants, the funding line is now re-drawn after three (3) months from the date of invitation if all available funds are not committed.

The initial deadlines were established at the inception of the state DWSRF program, with the intent of allowing additional time for applicants to comply with the federal requirements associated with all DWSRF applications. However, the DWSRF program is now more widely understood and accepted by potential applicants. Moreover, the amendments will allow a greater opportunity for projects on the priority list to obtain funding and facilitate a more efficient utilization of available funds.

There were no comments received on the proposed amendments.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §371.2

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State including specifically the SRF program.

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

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SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §§371.21, 371.25, 371.26

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State including specifically the SRF program.

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

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (the board) adopts amendments to 31 TAC §371.13 and §371.72, concerning the Drinking Water State Revolving Fund program with changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register* (27 TexReg 9290). The board adopts amendments to §371.13, Projects Eligible for Assistance, and §371.72, Release of Funds. The amendments to §371.13 and §371.72 will allow public water system applicants to submit an application and receive a commitment if the applicant does not yet have the technical, managerial, and financial capacity to maintain the public water system. However, no funds will be dispersed until the applicant has obtained the technical, managerial, and financial capacity to maintain the water system.

Currently, the language in §371.13 provides that no applicant is eligible for assistance from the Drinking Water Revolving Fund until the applicant has demonstrated the technical, managerial, and financial capacity to maintain the public water system (unless the funding is specifically utilized to obtain this capacity). Thus, an applicant may not even submit an application with the board until they have demonstrated the technical, managerial, and financial capacity to maintain the public water system. This procedure is inconsistent the language of the Safe Drinking Water Act, which only prohibits the disbursement of funds prior to evidence that an applicant has the demonstrated the technical, managerial, and financial capacity to maintain the public water system. Section 371.72 governs the prerequisites to the release of funds for an eligible project and is an appropriate location for language governing the technical, managerial, and financial capacity of an applicant. The amendments will harmonize board rules with federal law and allow more eligible public water system applicants to submit an application and receive a commitment for financial assistance, and at an earlier point in the funding process.

A comment was submitted by the Texas Commission of Environmental Quality to add minor language to further clarify existing rules and bring the rules into conformity with federal law. This comment has been incorporated into the amendments to §371.13 and §371.72. No other comments were received.

SUBCHAPTER B. PROGRAM REQUIREMENTS

31 TAC §371.13

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State including specifically the SRF program.

§371.13. Projects Eligible for Assistance.

(a) Projects are eligible for assistance if they will facilitate compliance with the primary or secondary drinking water regulations applicable to the public water system or otherwise significantly further the health protection objectives of the Act. Such projects include:

(1) capital investments to upgrade or replace infrastructure in order to continue providing the public with safe drinking water, including projects to replace aging infrastructure;

(2) projects to correct exceedances of the health standards established by the Act;

(3) projects to consolidate water supplies where the water supply is contaminated or the system is unable to maintain compliance with the national primary drinking water regulations for financial or managerial reasons and the consolidation will achieve compliance;

(4) purchase of capacity in another system if the purchase is part of a consolidation plan and is cost-effective considering buy-in fees and user fees; and

(5) projects in which the use of assistance will ensure that the system has the technical, managerial, and financial capacity to comply with the national primary drinking water regulations and applicable state drinking water regulations over the long term or, where the owner or operator of the system to be funded agrees to undertake all feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) to ensure compliance.

(b) Projects are not eligible to receive DWSRF funds if the primary purpose of the project is to supply or attract growth. If the primary purpose is to solve a compliance or public health problem, the entire project, including the portion necessary to accommodate a reasonable amount of growth over its useful life, is eligible.

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

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SUBCHAPTER F. PREREQUISITES TO RELEASE OF FUNDS

31 TAC §371.72

The amendments are adopted under the authority of the Texas Water Code, §6.101 and §15.605, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State including specifically the SRF program.

§371.72. Release of Funds.

(a) Release of Funds for Planning, Design and Permits. Prior to the release of funds for planning, design, and permits, the applicant shall submit for approval to the executive administrator the following documents:

(1) a statement as to sufficiency of funds to complete the activity;

(2) certified copies of each contract under which revenues for repayment of the applicant's debt will accrue;

(3) executed consultant contracts relating to services provided for planning, design, and/or permits;

(4) evidence that the applicant has the technical, managerial, and financial capacity to maintain the system unless the use of the funds will be to ensure that the system has the technical, managerial, and financial capacity to comply with the national primary or applicable state drinking water regulations over the long term; and

(5) other such instruments or documents as the board or executive administrator may require.

(b) Pre-design Funding. The funds needed for the total estimated cost of the planning and design costs if the DWSRF Engineering Feasibility Report required under §371.36 of this title (relating to Required DWSRF Engineering Feasibility Report) has been approved, the cost of issuance associated with the loan, and any associated capitalized interest will be released to the loan recipient and the remaining funds will be escrowed to the escrow agent bank or to the trust agent until all applicable requirements in subsections (a) and (c) of this section and §371.38 of this title (relating to Pre-Design Funding Option) have been met.

(c) Release of funds for building purposes. Prior to the release of funds for building purposes, the applicant shall submit for approval to the executive administrator the following documents:

(1) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(2) one executed original copy of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;

(3) evidence that the necessary acquisitions of land, leases, easements and rights-of-way have been completed or that the applicant has the legal authority necessary to complete the acquisitions;

(4) a statement as to sufficiency of funds to complete the project;

(5) certified copies of each contract under which revenues to the project will accrue;

(6) evidence that requirements and regulations of all local, state and federal agencies having jurisdiction have been met prior to release of building funds, including but not limited to permits and authorizations; and

(7) other such instruments or documents as the board or executive administrator may require.

(d) Release of funds for projects constructed through one or more construction contracts. For projects constructed through one or more construction contracts, the executive administrator may approve the release of funds for all or a portion of the estimated project cost, provided all requirements of subsection (c) of this section have been met for at least one of the construction contracts.

(e) Escrow of funds. The executive administrator may require the escrow of an amount of project funding related to contracts which have not met the requirements of subsection (c) of this section at the time of loan closing.

(f) Release of funds in installments to water supply corporations, eligible NPNC applicants, or eligible private applicants. Funds may be released to water supply corporations, eligible NPNC applicants, or eligible private applicants in installments pursuant to the terms of the loan agreement and provisions of this section.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.322

The Comptroller of Public Accounts adopts an amendment to §3.322, concerning exempt organizations, with changes to the proposed text as published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7766). The change to the proposed text in subsection (e)(1)(B) was to clarify the required documentation to allow an organization to provide a group exemption letter. Additionally, we corrected (f)(2) to complete a reference to §151.310 (a)(2).

The amendment clarifies subsection (b)(5), and (e)(1). The revocation information currently under (b)(5)(A), (B), and (C) has been deleted from this subsection and moved to subsection (f). Because the Legislature repealed Chapter 57 of the Texas Agriculture Code concerning Agricultural Development Corporations, subsection (c)(7) deletes reference to the Agricultural Development Act of 1983. The new language in subsection (f) provides the guidelines for revocation of exemptions from sales tax. Other subsections of the proposed rule are amended for the purpose of clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §151.310.

§3.322. Exempt Organizations.

(a) General policy. This section is administered using the following guiding principles:

(1) Because exemptions are not favored under the laws of the State of Texas, the provisions of this section shall be strictly interpreted.

(2) An organization must show by clear and convincing evidence that it meets the requirements of this section and the statutes. Any unresolved question about the qualifications of an organization will result in denial of exempt status.

(b) Entities that must prove exempt status. Entities or organizations that may qualify for exempt status include:

(1) a nonprofit charitable or eleemosynary organization that devotes all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, it cannot qualify for exemption under this provision because it is not organized for purely public charity. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the definition of charitable organization, even if the nonprofit organizations perform services that are often charitable in nature, are as follows: fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Although these organizations do not qualify for exemption as charitable organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the Internal Revenue Service (IRS) under the Internal Revenue Code (IRC), §501(c). Chambers of Commerce may qualify under paragraph (6) of this subsection;

(2) a nonprofit educational organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum that uses the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities that solely consist of presentation of discussion groups, forums, panels, lectures, or other similar programs, may qualify for the exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. An organization cannot qualify for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Although these organizations do not qualify for exemption as educational organizations, they may qualify for the exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the IRC, §501(c);

(3) a nonprofit religious organization that is an organized group of people who regularly meet for the primary purpose of holding, conducting, and sponsoring religious worship services according to the rites of their sect. The organization must be able to provide evidence of an established congregation that shows regular attendance of these services by an organized group of people. An organization that supports or encourages religion as an incidental part of its overall purpose, or one whose general purpose is to further religious work or instill its membership with a religious understanding, cannot qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the

organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups that organize for the purpose of holding prayer meetings, Bible study, or revivals. Although these organizations do not qualify for exemption as religious organizations, they may qualify for an exemption under the Tax Code, §151.310(a)(2), if they obtain an exemption from the IRS under the IRC, §501(c);

(4) a youth athletic organization that is a nonprofit corporation or association that exclusively provides athletic competition among persons under 19 years of age;

(5) a nonprofit organization that applies for and obtains a determination letter or a group exemption ruling letter from the IRS that states that the organization qualifies for exemption from federal income tax under the IRC, §501(c)(3), (4), (8), (10), or (19);

(6) a nonprofit chamber of commerce that represents at least one Texas city, county, or geographic locality. For the purpose of this section, a chamber of commerce is a perpetual organization devoted exclusively to promoting the general economic interest of all commercial enterprises in the city, county, or areas it represents. The term does not include chamber-like organizations such as trade associations or business leagues that serve a single line or closely related lines of business within a single industry;

(7) a nonprofit convention and tourist promotional agency organized or sponsored by at least one Texas city or county;

(8) an electric cooperative formed under the Electric Cooperative Corporation Act (Utilities Code, Chapter 161) and nonprofit electric cooperatives located outside the state;

(9) a telephone cooperative formed under the Telephone Cooperative Act (Utilities Code, Chapter 162) and nonprofit telephone cooperatives located outside the state; and

(10) a local organizing committee that is exempt from federal income tax under the IRC, §501(c). The local organizing committee must be authorized by an endorsing municipality to pursue an application and submit a bid on the municipality's behalf to a site selection organization for selection as the host site of the 2007 Pan American Games or the 2012 Olympic Games.

(c) Entities always exempt. The following entities and organizations are exempt under the law and are not required to request and prove exempt status except to send information as requested by the comptroller to verify its exempt status under this subsection:

(1) the United States, its unincorporated agencies and instrumentalities;

(A) The United States includes all parts of the executive, legislative, and judicial branches and all independent boards, commissions, and agencies of the United States government.

(B) Instrumentalities and agencies of the United States include:

(i) various military entities under the supervision of a base commander;

(ii) organizations that contract with the United States and whose contracts explicitly and unequivocally state that they are agents of the United States;

(iii) organizations wholly owned by the United States or wholly owned by an organization that is itself wholly owned by the United States; and

(iv) organizations specifically named as agents of the United States or exempted as instrumentalities of the United States by federal statutes.

(C) Instrumentalities and agencies of the United States also include organizations having substantially all of the following characteristics:

(i) they are funded by the United States;

(ii) they carry out a specific program of the United States;

(iii) they are managed or controlled by officers of the United States;

(iv) their officers are appointed by the United States;

(v) they perform commitments of the United States under an international treaty; and

(vi) they are not organized for private profit.

(2) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States. "Wholly owned" means total or 100% ownership;

(3) federal credit unions organized under 12 United States Code, §1768;

(4) the State of Texas, its unincorporated agencies and instrumentalities;

(5) any county, city, special district or other political subdivision of the State of Texas, and any college or university created or authorized by the State of Texas;

(6) any company, department, or association organized for the purpose of answering fire alarms and extinguishing fires or for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which receive nominal or no compensation for their services;

(7) nonprofit corporations formed under the Development Corporation Act of 1979 or the Health Facilities Development Act of 1981 when they purchase items for their exclusive use and benefit. The exemption does not apply to items purchased by the corporation to be lent, sold, leased, or rented. See §3.291 of this title (relating to Contractors); and

(8) nonprofit corporations established by the Texas National Research Laboratory Commission under Government Code, §465.008(g). Taxable items purchased or leased from these corporations are also exempt from tax if the items are used in or for carrying out an eligible undertaking as defined by Government Code, §465.021.

(d) Qualification requirements. To qualify for exempt status under subsection (b) of this section, an organization must satisfy all of the following requirements.

(1) An organization must be organized or formed solely to conduct one or more exempt activities. The Comptroller will consider all documents necessary to prove the purpose for which an organization is formed.

(2) An organization must devote its operations exclusively to one or more exempt activities.

(3) An organization must dedicate its assets in perpetuity to one or more exempt activities.

(4) No profit or gain may pass directly or indirectly to any private shareholder or individual. All salaries or other benefits furnished officers and employees must be commensurate with the services actually rendered.

(e) How to obtain exempt status.

(1) To apply for and obtain a letter of exemption from the comptroller, an organization must submit to the comptroller a written statement that details the nature of the activities conducted or to be conducted and the following documentation:

(A) a copy of the bylaws, a copy of its constitution, and a copy of any applicable trust agreement, and if the organization is a corporation, a copy of the articles of incorporation and any related amendments;

(B) if the claimed exemption is under §501(c)(3), (4), (8), (10), or (19) of the IRC, a copy of all pages of a determination letter or a group exemption ruling letter from the IRS. If the original determination letter or group exemption ruling letter is more than four years old, then the organization must send a copy of a recent letter from the IRS. A nonprofit organization that claims exemption under a parent's exemption must provide a copy of the parent organization's group exemption ruling letter from the IRS and a letter from the parent organization that states that the applicant nonprofit organization is a subordinate covered under the parent organization's group exemption.

(2) The comptroller may require an organization to furnish additional information to establish the claimed exemption. For example, the comptroller may request financial information and documentation that shows all services that the organization performs.

(3) After a review of the material, the comptroller will inform an organization in writing if it qualifies for exemption.

(4) The comptroller or an authorized representative of the comptroller may audit the records of an organization at any time during regular business hours to verify the validity of the organization's exempt status.

(f) Revocations, withdrawals, or loss of exemptions.

(1) Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt organization no longer qualifies for exemption, a comptroller's representative will notify the organization that its exempt status is under review. A comptroller's representative may request additional information that is necessary to ascertain the continued validity of the organization's exempt status. An organization must immediately notify the comptroller in writing of a revocation, withdrawal, or loss of exemption when the organization no longer qualifies for exemption. If the comptroller determines that an organization is no longer entitled to its exemption, then the comptroller will notify the organization. The date of the notification letter is the effective date of the revocation. All subsequent purchases are subject to tax.

(2) For nonprofit organizations that are granted an exemption under Tax Code, §151.310 (a)(2), the revocation, withdrawal, or loss of the federal income tax exemption automatically terminates the sales tax exemption effective the earlier of the date on which the IRS serves formal written notice of the revocation on the nonprofit organization or the date on which the IRS notifies the comptroller.

(A) The effective date of a revocation for a nonprofit organization that was granted an exemption as a recognized subordinate is the date on which the organization ceased to be recognized as a subordinate under the federal group exemption. All subsequent purchases by the organization are subject to tax.

(B) The organization must notify the comptroller in writing of the revocation, withdrawal, or loss of exemption immediately upon receiving notice from the IRS of such revocation, withdrawal, or loss.

(C) Under a federal/state exchange agreement, the IRS may notify the comptroller when an organization no longer qualifies for federal exemption.

(3) An organization that loses its exempt status must immediately notify its suppliers that its purchases are subject to tax. Failure to so notify a supplier is a violation of the sales tax law.

(4) After revocation, the organization may re-apply for exempt status under other provisions of this section.

(g) Purchases by an exempt organization.

(1) The purchase, lease, or rental of a taxable item that relates to the purpose of an exempt organization listed in subsection (b)(1), (2), (3), or (5) of this section is exempt from tax when the organization or an authorized agent of the organization pays for the item and provides the vendor an exemption certificate in the form prescribed by the comptroller. See §3.287 of this title (relating to Exemption Certificates).

(2) The purchase, lease, or rental of a taxable item to an exempt organization listed in subsections (c) and (b)(4), (6), (7), (8), or (9) of this section is exempt from tax when the organization or an authorized agent pays for the taxable item and provides the vendor an exemption certificate in lieu of tax.

(3) A purchase voucher issued by any one of the entities identified in subsection (c) of this section is sufficient proof of the entity's exempt status.

(4) An exemption certificate must be given to a vendor when an authorized agent makes a cash purchase of merchandise for an exempt organization.

(5) An employee of an exempt organization cannot claim an exemption from tax when the employee purchases taxable items of a personal nature even though the employee receives an allowance or reimbursement from the organization.

(6) A person who travels on official business for an exempt organization must pay sales tax on taxable purchases whether reimbursed on a per diem basis or reimbursed for actual expenses incurred.

(h) Sales by an exempt organization.

(1) An exempt organization that sells taxable items must obtain a sales tax permit and is responsible for collection and remittance of tax on all sales of taxable items that the organization makes, unless such sales are otherwise exempt from the tax. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service), §3.299 of this title (relating to Newspapers, Magazines, Publishers, Exempt Writings), and §3.298 of this title (relating to Amusement Services).

(2) A religious, educational, charitable, eleemosynary organization, or an organization exempt under IRC, §501(c)(3), (4), (8), (10), or (19) and each of its bona fide chapters, may have two one-day tax-free sales or auctions each calendar year. During a tax-free sale or auction lasting only one day, the organization is not required to collect sales tax on the sales price of taxable items sold for $5,000 or less. Additionally, a taxable item may be sold tax-free during a one-day tax-free sale or auction regardless of price if the item is manufactured by the organization or is donated to the organization and is not sold to the donor.

(A) One day is a consecutive 24-hour period. If a designated tax-free sale or auction exceeds a consecutive 24-hour period,

the organization or chapter may not hold another tax-free sale or auction that calendar year. An organization or chapter may hold the two tax-free sales or auctions consecutively, but the two tax-free sales or auctions by that organization or chapter cannot exceed a maximum of 48 consecutive hours in a calendar year.

(B) The organization may employ an auctioneer to conduct the sale or auction and pay the auctioneer a reasonable fee not to exceed 20% of the gross receipts.

(C) If two or more exempt organizations or chapters jointly hold a tax-free sale or auction, each is considered to have held a tax-free sale or auction during that calendar year. Each exempt organization that participates in a joint tax-free sale or auction may hold one additional tax-free sale or auction during that calendar year.

(3) Sales by agencies and instrumentalities of the federal government are subject to tax, and the agencies and instrumentalities must collect and remit tax unless the collection of tax is specifically prohibited by federal law. If the collection is prohibited by specific federal law, the purchaser of the taxable item shall be liable for reporting the tax directly to the state.

(i) Organizations that do not qualify for exempt status. Examples of organizations that cannot qualify for exempt status include professional groups, certain mutual benefit or social groups, political, trade, business, bar, or medical associations. For information on exempt sales by senior citizens' organizations or exempt sales by student organizations affiliated with a college or university, see §3.316 of this title (relating to Occasional Sales and Other Tax-Free Sales).

(j) Consular officers, administrative, and technical employees.

(1) Foreign diplomatic personnel stationed in the United States are exempt from the payment of sales or use tax if they hold a photo-identification card issued by the United States Department of State. Cards are not transferable and may not be used by others, including spouses.

(2) Procedure for retailers.

(A) A retailer should retain a copy of the sales invoice or contract signed by the consular official that bears the consular exemption certificate number appearing on the back of the card.

(B) Certain cards are limited in what and how much may be purchased tax free. This information is contained on the card itself. Retailers who make sales to persons with cards that require purchases to exceed a certain dollar limit should include only those taxable items that are purchased in the same transaction to determine if the appropriate level has been reached. Purchases made in separate transactions may not be added together to reach minimum exemption levels.

(k) The Alabama-Coushatta, Kickapoo, and the Tigua Native American tribes.

(1) The purchase, lease, or rental of a taxable item to a tribal council or a business owned by a tribal council of these Native American tribes is exempt from sales tax. An exemption certificate or purchase order from the tribal council is sufficient proof of the exempt sale.

(2) Sales made by a tribal council or a business owned by a tribal council of these Native American tribes within the boundaries of the reservation are exempt from sales tax if:

(A) the taxable item being sold is made by a member of the tribe; and

(B) the taxable item is a cultural artifact of the tribe.

(3) Sales made off the reservation or sales made on the reservation of items that are not cultural artifacts are taxable.

(l) Bordering states and governmental units of states that border Texas.

(1) The State of Arkansas, State of Louisiana, State of New Mexico, State of Oklahoma, or a governmental unit of a state that borders Texas may qualify for exemption on the purchase, lease, or rental of taxable items, but only to the extent that the bordering state or governmental unit of a state that borders Texas exempts or does not impose a tax on similar sales of items to the State of Texas or a political subdivision of the State of Texas.

(2) A bordering state or a governmental unit of a state that borders Texas may enter into a reciprocal agreement with the comptroller for the exemption of taxable items purchased, leased or rented to the State of Texas or a political subdivision of the State of Texas.

(3) The purchase, lease, or rental of a taxable item to a bordering state or a governmental unit of a bordering state is exempt from sales tax to the extent allowed under the terms of the reciprocal agreement. An exemption certificate from a qualifying bordering state or a governmental unit of a bordering state is sufficient proof of the exempt sale.

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 November 12, 2002.

TRD-200207348
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: December 2, 2002
Proposal publication date: August 23, 2002
For further information, please call: (512) 475-0387

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CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING-PURCHASE VOUCHERS

34 TAC §5.57

The comptroller of public accounts adopts amendments to §5.57, concerning the use of payment cards by state agencies, with changes to the proposed text as published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7049).

The only change made to the adopted text is in subsection (q)(1)(B). The term "address" is being changed to "remittance." This change is necessary to correct an error in the proposed text.

The purposes of the amendments are as follows. First, the amendments will reflect the legislature's abolishment of the General Services Commission and creation of the Texas Building and Procurement Commission (TBPC) in 2001.

Second, the amendments will reflect the legislature's 1999 addition of charge cards to the statute that previously authorized state agencies to use credit cards to pay for purchases. The amendments will result in the section using the term "payment card" when referring to either credit cards or charge cards.

Third, the amendments will authorize the comptroller to allow an institution of higher education to contract directly with a payment card issuer and authorize any state agency to participate in that contract. TBPC will retain the authority to contract directly with a payment card issuer on behalf of any state agency that chooses to participate in the contract.

Fourth, the amendments will make technical and non-substantive improvements to the section.

The Texas Department of Transportation (TxDOT) submitted the only comment received about the proposed text. TxDOT said that the proposed amendments of subsection (q)(1) could result in a requirement for TxDOT to submit to the uniform statewide accounting system (USAS) the Texas identification number (TIN) of each person that TxDOT pays with a payment card. TxDOT said that the requirement would be a major change and would increase TxDOT's costs and administrative burdens. TxDOT suggested that proposed subparagraphs (A) and (B) of subsection (q)(1) be merged to eliminate vagueness.

The comptroller agrees that subsection (q)(1) would authorize the comptroller to require any state agency to submit to USAS the unique TIN of each person that the agency pays with a payment card. The comptroller, however, currently intends not to exercise that authority. An agency will be required to submit the unique TIN of a person that the agency pays with a payment card only if the agency is paying for a capital item. Otherwise, the agency may submit a generic TIN, which is a TIN that is not unique to that person. Therefore, the comptroller believes that no change to subsection (q)(1) is necessary.

The amendments are adopted under Government Code, §403.023(b), which authorizes the comptroller to adopt rules relating to the use of credit or charge cards by state agencies to pay for purchases.

The amendments implement Government Code, §403.023(b)-(e).

§5.57. Use of Payment Cards by State Agencies.

(a) Definitions. In this section:

(1) "Commission" means the Texas Building and Procurement Commission.

(2) "Consulting service" has the meaning assigned by §5.54 of this title (relating to Consulting Services Contracts).

(3) "Executive director" means the individual who is the chief administrative officer of a state agency. The term excludes a member of a governing body.

(4) "Executive head" means:

(A) the elected or appointed state official who is authorized by law to administer a state agency that is not headed by a governing body; or

(B) the executive director of a state agency that is headed by a governing body.

(5) "Institution of higher education" has the meaning assigned by the Education Code, §61.003, other than a public junior college.

(6) "Payment card" means a credit or charge card issued to an officer or employee of a state agency for the purpose of allowing the officer or employee to purchase goods or services for the agency.

(7) "Payment card purchase" means the use of a payment card to pay for the purchase of a good or a service.

(8) "State agency" means:

(A) a board, commission, department, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, or a state judicial agency.

(b) Applicability of this section. Except as provided in subsection (c) of this section, this section applies to a state agency's use of a payment card regardless of the type of funds the agency uses to pay the payment card issuer.

(c) Exemptions.

(1) This section does not apply to a state agency if a law other than the Government Code, §403.023, specifically authorizes, requires, prohibits, or otherwise regulates the agency's use of a payment card.

(2) This section does not apply to the extent its application would affect a contract in which a state agency is a party. This paragraph applies only if the contract was in effect on September 1, 1993.

(3) This section does not apply to the extent its application would violate a constitutional prohibition against a law that impairs a contractual obligation.

(4) This section does not apply to the extent necessary to avoid an irreconcilable conflict with a federal law or regulation.

(5) This section does not apply to the use of a payment card to pay for a travel expense incurred by a state officer or employee while conducting official state business.

(d) Effect of noncompliance with this section. The comptroller may suspend or terminate a state agency's authority to use a payment card if the comptroller determines that the agency or an officer or employee of the agency has violated this section.

(e) Procurement of payment card services by the commission or an institution of higher education.

(1) The commission may contract with a payment card issuer on behalf of any state agency that chooses to participate in the contract.

(2) The comptroller may authorize an institution of higher education to contract with a payment card issuer on behalf of any state agency that chooses to participate in the contract. The institution may not enter into the contract without the comptroller's authorization.

(3) A state agency that is participating in a contract between the commission and a payment card issuer may start participating in a contract between an institution of higher education and a payment card issuer if:

(A) the comptroller approves of the agency's participation in the contract involving the institution; and

(B) the agency ceases participation in the contract involving the commission.

(4) A state agency that is participating in a contract between an institution of higher education and a payment card issuer may start participating in a contract between the commission and a payment card issuer if:

(A) the comptroller approves of the agency's participation in the contract involving the commission; and

(B) the agency ceases participation in the contract involving the institution.

(5) A state agency may not use a payment card to pay for a purchase unless the card was issued under a contract between a payment card issuer and either the commission or an institution of higher education.

(6) A state agency may begin making payment card purchases only after the agency has complied with the procedural requirements of:

(A) the commission, if the agency is participating in a contract between the commission and a payment card issuer; or

(B) an institution of higher education, if the agency is participating in a contract between the institution and a payment card issuer.

(f) Adoption of procedures by state agencies. A state agency shall adopt reasonable procedures governing the issuance and security of payment cards and the use of those cards by the agency's officers and employees. Upon request, the agency shall make the procedures available to the comptroller for review.

(g) Prohibited uses of payment cards. A state agency may not use a payment card and may not reimburse an officer or employee for the use of a payment card for:

(1) a purchase of a personal nature or any other purchase not connected with official state business;

(2) a cash advance;

(3) a purchase of a consulting service;

(4) a purchase of a good or a service that may not be purchased without the prior approval of another state agency;

(5) a purchase that the comptroller audits before payment; or

(6) a purchase from a vendor if a payment to it is prohibited by:

(A) Government Code, §403.055 or §2107.008;

(B) Education Code, §57.48, or §57.482; or

(C) Family Code, §231.007.

(h) Applicability of purchasing requirements. The use of a payment card to pay for a purchase does not automatically exempt a state agency or its officers and employees from any purchasing requirement of state law or the commission.

(i) Payments to payment card issuers. A state agency shall pay a payment card issuer through an electronic funds transfer.

(j) Refunds. A state agency may not accept a cash refund for a purchase if the agency paid for the purchase with a payment card.

(k) Lost or stolen payment cards. The state employee that had custody of a payment card immediately before it was lost or stolen shall report the loss or theft to the payment card issuer according to its requirements.

(l) Disputed charges. A state agency shall dispute any incorrect charge that appears on an invoice the agency receives from a payment card issuer. When disputing the charge, the agency shall comply with applicable law and the issuer's requirements.

(m) Taxes. A state agency or a state employee shall properly claim any available exemption from paying a state or federal tax that is assessed on a payment card purchase.

(n) Responsibilities and notification of state employees.

(1) A state employee shall ensure that each of the employee's payment card purchases comply with applicable state law and this section.

(2) The executive head of a state agency shall notify the agency's employees about the requirements of this section.

(o) Fiscal year determination. The fiscal year that must be charged for a purchase is not affected by the use of a payment card to pay for the purchase. For example, a state agency that pays a payment card issuer for a service purchased by the agency must charge the payment to the fiscal year in which the service was rendered.

(p) Prohibition against excess obligations. A state agency that uses a payment card to pay for a purchase should be careful not to violate any provision in the General Appropriations Act about the incurrence of excess obligations.

(q) Purchase document and receipt requirements.

(1) A purchase document that a state agency submits to the uniform statewide accounting system for a payment to a payment card issuer must comply with the comptroller's general requirements for the submission of those documents. In addition, the document must:

(A) provide the transaction charge and the appropriate Texas identification number on the detail lines;

(B) provide the Texas identification number and name of the payment card issuer on the remittance line; and

(C) contain any other information the comptroller considers necessary.

(2) A state agency shall keep in its files any receipt that a vendor issues to the agency for a payment card purchase. The receipt must contain a description of the good or service purchased that is sufficient to support the expenditure object code used by the agency. The agency shall make the receipt available to the comptroller upon request.

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 November 13, 2002.

TRD-200207389
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: December 3, 2002
Proposal publication date: August 9, 2002
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.43

The Texas Youth Commission (TYC) adopts the repeal of §85.43, concerning Home Placement, without changes to the proposed text as published in the October 4, 2002 issue of the *Texas Register*(27 TexReg 9295).

The justification for the repeal is to increase options for parole placement of youth in the community.

The repeal will allow for a new section to be published.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior.

The adopted rule implements the Human Resource Code, §61.034.

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

Filed with the Office of the Secretary of State on November 14, 2002.

TRD-200207445
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 424-6301

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37 TAC §85.43

The Texas Youth Commission (TYC) adopts new §85.43, concerning Home Placement, with changes to the proposed text as published in the (October 4, 2002), issue of the *Texas Register*(27 TexReg 9295). The change consists of minor reference and clarification changes. The clarification change was to identify the age of the youth is 18 and over for parole placement.

The justification for the new rule will increase options for parole placement of youth in the community.

The new rule will outline new procedures by which homes are assessed for parole placement. Additional guidelines have been added to broaden the options for parole placement for youth at the age of 18 and over.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior.

The adopted rule implements the Human Resource Code, §61.034.

§85.43. Home Placement.

(a) Purpose. The purpose of this rule is establish criteria and procedures used by Texas Youth Commission (TYC) staff to determine whether a youth in TYC jurisdiction will be allowed to return to his/her home on completion of program requirements or whether alternative living arrangements must be sought.

(b) Applicability.

(1) This policy applies to all committed youth who will be placed on parole prior to age 21.

(2) For Determinate Sentenced offenders, if the minimum period of confinement date will occur on or after the youth's 19th birthday, the parole officer is exempt from completing home assessments or updates since the youth, if released to parole, will be under the supervision of the Texas Department of Criminal Justice-Parole Division (TDCJ-PD).

(3) Other related policies may apply such as (GAP) §87.91 of this title (relating to Family Reintegration of Sex Offenders) and (GAP) §85.45 of this title (relating to Parole of Undocumented Foreign Nationals).

(c) Explanation of Terms Used.

(1) Approved Home Placement Status - occurs when the assessment indicates conditions that could facilitate the rehabilitative adjustment of the youth.

(2) Disapproved Home Placement Status - occurs when the assessment indicates conditions that would impede the rehabilitative adjustment or threaten safety of the youth and/or other individuals in the home.

(3) Incomplete Home Placement Status - the assessment process is not complete.

(4) Placement Objection - occurs when a home assessment indicates that none of the criteria for disapproval of the home exists but:

(A) the parent provides in writing that he/she cannot or will not supervise the youth; or

(B) the parent provides in writing that the youth is not welcome in the home; or

(C) a parent refusing to accept supervision of his/her child under the age of 18, and/or a TYC youth claiming abuse in the home, will be reported to the Department of Protective and Regulatory Services (DPRS).

(5) Sexual Abuse Victim - a person who, as the result of a sexual offense, suffers a pecuniary loss or personal injury or harm.

(6) Potential Sexual Abuse Victim - a person who has a profile similar to that of the victim of the sexual offense, such as gender, age, etc., or who has a profile that triggers the delinquent's deviant or abusive sexual arousal patterns.

(d) Home Assessment.

(1) The assigned parole officer shall assess the home of each youth in their jurisdiction and shall determine whether the home is approved or disapproved for placement. The assigned parole officer will also determine whether the youth will be returned to his/her home upon release from residential placement. Each home assessment will be completed in the home of the youth's legal parent(s), guardian, or relative who has volunteered to have the youth placed in his/her home. The home assessment process is also applicable to all youth properly referred to parole officers through the Texas Interstate Compact on Juveniles (ICJ) Office.

(2) Within 90 days of admission to TYC, all homes shall be either approved or disapproved as a result of a completed home assessment.

(3) The home placement status may be changed but only as a result of a follow-up home assessment by the assigned parole officer.

(4) A completed home assessment shall be considered current for any youth released to his/her home within 12 months of the first day counted on the minimum length of stay. Home assessment follow-ups will be conducted annually thereafter.

(5) For Violent A offenders who have a minimum length of stay of 24 months, the follow-up home assessment is to be conducted no later than 90 days from the minimum length of stay release date, and be incorporated into the formal release plan.

(6) Any time new evidence or special circumstances warrant, a follow-up home assessment may be conducted.

(e) Home Approval/Disapproval Criteria. A youth's home shall be considered approved unless one or more of the following disapproval criteria exists, and can be documented:

(1) physical abuse;

(2) sexual abuse;

(3) physical absence of parent caretaker due to criminal incarceration or physical/ psychiatric hospitalization;

(4) serious physical/survival neglect;

(5) legal termination of parental rights for youth under 18 years of age;

(6) the youth is a sex offender and criteria/requirements in (GAP) §87.91 of this title (relating to Family Reintegration of Sex Offenders) have not been met;

(7) the youth is an undocumented foreign national and a copy of the notice from TYC to the Immigration and Naturalization Service (INS) has not been received by the parole officer as outlined in (GAP) §85.45 of this title (relating to Parole of Undocumented Foreign Nationals).

(f) Parole Placement.

(1) Approved Home - Placement Objection Exists. An approved home with objections exists when the parents/guardian refuses or is unable to accept supervision and placement in the home. The parole officer and primary service worker (PSW) will determine alternative home placements. Alternative home placements may be determined depending on whether or not the youth is over 18 years of age.

(2) Disapproved Home Placement.

(A) Youth with disapproved homes will not be returned/placed in their homes.

(B) A disapproved home may be reversed if the TYC parole staff determines specific actions have been taken to correct any deficiencies.

(C) Parents are immediately informed in writing when the home is disapproved for placement and the reasons for such. Any action that the parent may take to correct a deficiency is included.

(D) Emergency furloughs of youth with a current disapproved home may be granted if necessary.

(E) TYC parole staff will seek documented evidence of relevant problems found by another agency to determine if disapproval criteria exist.

(F) If the youth is under 18 years of age and will not be returning home, staff will seek assistance from the parent(s) in locating a relative who might be willing to have the youth placed in their home. If the home of the relative is approved, a youth may be placed in the home unless the parent(s) strongly objects to such placement in which case alternatives are sought. When a suitable relative cannot be located, an alternative program placement will be required.

(3) Alternative Home Placement for Youth at the Age of 18 and Over with an Approved Home with Objections or a Disapproved Home Placement.

(A) For youth at the age of 18 and over whose parent/guardian has refused placement, the parole officer may place the youth in an approved home location of a non-relative. If the parent/guardian has an objection to the non-relative placement, the objections will be considered in the final decision, however, placement may still occur in spite of the parental objections.

(B) An alternative home placement for youth at the age of 18 and over shall be considered approved unless one or more of the following criteria exist, and can be documented:

(i) there is physical absence of a dwelling;

(ii) the legal head of household is unwilling to allow youth to live in the home;

(iii) the youth is a sex offender and the victim or potential victim presently resides in the home and requirements for placement have not been met as per (GAP) §87.91 of this title(relating to Family Reintegration of Sex Offenders);

(iv) the individuals residing in the home are on adult probation or parole and are not related to the youth;

(v) there is documented evidence that the individual(s) residing in the home have had negative and/or unsafe influence or impact on the youth.

(C) When an alternative home placement cannot be approved, the assigned parole officer shall immediately inform the residential PSW so that a second viable alternative home placement may be identified.

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 November 14, 2002.

TRD-200207444
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 424-6301

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CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.85

The Texas Youth Commission (TYC) adopts new §87.85, concerning Sex Offender Registration, without changes to the proposed text as published in the October 4, 2002 issue of the *Texas Register*(27 TexReg 9297).

The justification for the new rule is complying with the code of criminal procedures regarding the registration of sex offenders committed to TYC.

The new rule will be in compliance with the code of criminal procedures.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §62.02, which provides the Texas Youth Commission with the authority to register certain youth as sex offenders.

The adopted rule implements the Human Resource Code, §61.034.

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

Filed with the Office of the Secretary of State on November 14, 2002.

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Steve Robinson
Executive Director
Texas Youth Commission
Effective date: December 4, 2002
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For further information, please call: (512) 424-6301

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CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.81

The Texas Youth Commission (TYC) adopts an amendment to §91.81, concerning Medical Consent, without changes to the proposed text as published in the October 4, 2002 issue of the *Texas Register*(27 TexReg 9298).

The justification for amending the section will enhance the tracking of correspondence related to consent for medical treatment of youth by the parent.

The amendment to the section is a minor change that states medical notifications for consent from parents will be sent via certified mail.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any medical treatment that is necessary.

The adopted rule implements the Human Resource Code, §61.034.

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

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Steve Robinson
Executive Director
Texas Youth Commission
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For further information, please call: (512) 424-6301

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CHAPTER 97. SECURITY AND CONTROL
SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.29

The Texas Youth Commission (TYC) adopts an amendment to §97.29, concerning Escape, Abscondence and Apprehension, without changes to the proposed text as published in the October 4, 2002, issue of the *Texas Register*(27 TexReg 9298 and 9299).

The justification for amending the section is a clearer understanding of the definition of terms.

The amendment will clarify the definition of an attempted escape so it is not to be misinterpreted as an escape.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.093, which provides the Texas Youth Commission with the authority to apprehend youth who have escaped TYC custody without a warrant or other order.

The adopted rule implements the Human Resource Code, §61.034.

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

Filed with the Office of the Secretary of State on November 14, 2002.

TRD-200207448
Steve Robinson
Executive Robinson
Texas Youth Commission
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 424-6301

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37 TAC §97.43

The Texas Youth Commission (TYC) adopts an amendment to §97.43, concerning Institution Detention Program, without changes to the proposed text as published in the October 4, 2002 issue of the *Texas Register*(27 TexReg 9299).

The justification for amending the section is clarification of the intent of the policy for holding youth accountable.

The amendment will include secure contract care programs as being under the same guidelines for institution detention as TYC operated institutions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs designed to rehabilitate youth.

The adopted rule implements the Human Resource Code, §61.034.

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

Filed with the Office of the Secretary of State on November 14, 2002.

TRD-200207449
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: December 4, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 424-6301

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice adopts an amendment to §151.4, concerning Presentations to the Texas Board of Criminal Justice, without changes to the text as proposed in the October 4, 2002, issue of the *Texas Register* (27 TexReg 9301) and will not be republished.

The purpose of the amendment is to respond to a petition for a rule change by allowing for pre-registration of public presentations to the Texas Board of Criminal Justice on topics that are subject to the Board's jurisdiction but are not posted for deliberation.

The only comment received was from Nancy Bailey who requested clarification on the rule, but suggested no changes or comments to the rule.

The revisions are adopted under Texas Government Code, Sections 492.013, which grants general rulemaking authority to the Board and 492.007, which requires the Board to provide access and public comment on issues within the jurisdiction of the board, as well as Texas Government Code Chapter 551, the Open Meetings Act.

Cross Reference to Statutes: Texas Government Code, Chapter 551, and Section 492.007.

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 November 15, 2002.

TRD-200207485
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: December 5, 2002
Proposal publication date: October 4, 2002
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

The Texas Department of Human Services (DHS) adopts the repeal of §3.6001 and §3.6002, and adopts new §3.6001, in its Texas Works chapter. The repeals of §3.6001 and §3.6002 are adopted without changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7052). New §3.6001 is adopted with changes to the proposed text published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7052).

Justification for the repeals and new section is to comply with the Human Resources Code, §31.0066, which requires DHS, the Texas Workforce Commission, and the Texas Health and Human Services Commission to jointly adopt rules regarding hardship exemptions for Temporary Assistance for Needy Families (TANF) clients from the federal five-year lifetime limit. Federal law allows states to exempt up to 20% of their caseloads from these lifetime limits. The proposed hardship exemptions provide a safety net for persons with real barriers to employment, while reinforcing the core program values of work and personal responsibility.

DHS received written comments from the Texas Welfare Reform Organization and the Texas Workforce Commission. No comments were received at a public hearing held on September 3, 2002. A summary of the comments and DHS's responses follow.

Comment: A comment regarding §3.6001(d)(4) suggested that continued eligibility for extended TANF due to a personal disability or caring for a disabled family member should be contingent upon the client having a determination pending for Supplemental Security Income (SSI), or a doctor's statement no more than six months old being provided and verified by a third party physician, if the client is denied SSI and is ineligible for community care services. Also, if a family member is approved for community care services, then the client must be a part of the family member's care plan.

Response: DHS does not believe the rules should be revised to incorporate the level of specificity requested by the comment. DHS agrees with the suggestions for a third party review and has always intended to implement the policy and procedures in the Texas Works Handbook as outlined in the suggestion. However, DHS's intent is to provide for an independent third party review, but not necessarily a physician review, by the DHS Disability Determination Section, which reviews claims submitted by DHS Long Term Care.

Comment: A commenter suggested that there are waiting lists for community care services, and not all services are available in all areas of the state. The rule language in §3.6001(d)(4) should reflect this.

Response: DHS disagrees. The purpose of the rule is simply to allow eligibility for community care services to meet requirements for the disability exemption when those services are available.

Comment: A commenter suggested that DHS clarify that lifetime eligibility for the extended TANF program is lost upon the first violation of Choices or child support requirements.

Response: DHS agrees and clarified §3.6001(d)(3).

Comment: The preamble and the rule contain conflicting information regarding the counting of months when a client is limited to 24 cumulative months of extended TANF and is exempt from or had good cause for not participating in Choices. The preamble should be changed to match the rule language.

Response: DHS agrees that the rule language is correct and will remain unchanged.

Comment: Eligibility for extended TANF due to the inability to obtain employment should not be restricted to clients with fewer than two instances of Choices noncompliance.

Response: DHS disagrees. It was DHS's intent to have a stricter eligibility requirement for extended benefits for individuals who do not have barriers resulting from disability, disabled family members, or lack of access to services.

Comment: Employment should be "suitable" employment. The commenter suggested that "suitable" be defined as employment that provides compensation at the rate required by the "living wage" ordinance or at a rate at least that of the federal minimum wage.

Response: DHS agrees that the term "employment" needs further definition. DHS revised §3.6001(d)(1)(B)(vi) to refine and clarify the term "employment" for the purposes of the subparagraph.

Comment: A comment suggested that a rule be added that states the client is informed in writing and orally at each review, re-certification, and re-application of the number of months of time-limited assistance the household has received, the number of months remaining, and the exemptions from the time limit and the impact of sanctions on eligibility for a time limit exemption.

Response: DHS agrees that clients should be informed as the commenter suggests but does not believe a specific rule is required. This information will be included in department polices and procedures.

In addition to the changes indicated above, DHS made a minor editorial change to the text of §3.6001 to clarify and improve the accuracy of the section.

SUBCHAPTER PP. APPLICABILITY OF POLICIES RESULTING FROM HOUSE BILL 1863

40 TAC §3.6001, §3.6002

The repeals are adopted under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The repeals implement the Human Resources Code, §§31.001-31.081.

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 November 8, 2002.

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Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438-3734

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40 TAC §3.6001

The new section is adopted under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The new section implements the Human Resources Code, §§31.001-31.081.

§3.6001. Applicability of Temporary Assistance for Needy Families (TANF) Policies Resulting from Human Resources Code, §31.0065, Relating to Time-limits.

(a) The state time-limitation policies specified in the Human Resources Code, §31.0065, apply to all TANF cash assistance cases, including TANF State Program cases, in areas designated by the Texas Department of Human Services (DHS).

(b) Once state time-limits are exhausted, the caretakers and second parents are not eligible to receive TANF cash benefits for five years, unless they have complied with employment services requirements during their time-limited months and meet one of the following hardship criteria:

(1) Severe personal hardship is met if the client:

(A) has a terminal or permanently disabling illness or injury,

(B) is incapacitated by illness or injury for a temporary period, or

(C) is needed in the home for more than 30 days to provide care for a close family member, in or out of the household, who has a temporarily or permanently disabling illness or injury, or terminal illness.

(2) Local economic hardship is met if the client:

(A) lives in a county that is classified by DHS as economically depressed for purposes of TANF time-limits. DHS determines a county is economically depressed if the county's unemployment rate exceeds 10%; or

(B) has done an independent job search, contacting at least 40 employers within a 30-day period, and cannot find employment that replaces the sum of the individual's grant amount and the applicable work expense disregard. While exempt for employment hardship, the client must contact at least 40 employers during each month of the exemption period, unless good cause exists, or no subsequent employment hardship exemption is allowed during the client's five-year freeze-out period.

(3) Severe personal hardship must be requested within 90 days after the illness or injury begins or the client is needed in the home to care for a close family member.

(4) County hardship may be requested at any time during the client's five-year freeze-out period.

(5) Employment hardship must be requested within 90 days after exhausting the TANF time- limit, loss of a job, or the reduction of the number of work hours.

(c) A person disqualified after exhausting his TANF time-limits as detailed in subsection (b) of this section may reestablish eligibility by:

(1) making application before the five-year period of ineligibility has expired and providing verification that he meets the criteria for severe personal hardship or local economic hardship; or

(2) making application after five complete years of disqualification or nonparticipation in the TANF program, except for participation detailed in paragraph (1) of this subsection.

(d) The federal time-limit policies specified in 45 Code of Federal Regulations, §264.1, apply to all TANF and TANF-SP families containing a caretaker or second parent.

(1) No member of a family containing a TANF/TANF-SP caretaker or second parent who has reached his 60-month time-limit for receipt of benefits is eligible for extended TANF/TANF-SP benefits unless the caretaker or second parent:

(A) has no more than 12 months of sanction status for Choices and/or child support noncompliance during the first 60 months of TANF receipt, and

(B) meets one or more of the following hardship criteria:

(i) has a personal mental or physical disability expected to last more than 180 days;

(ii) is responsible for caring for a disabled family member, provided the disability is expected to last more than 180 days;

(iii) is a victim of domestic violence;

(iv) resides in a county that does not have full Choices services;

(v) resided in a county without full Choices services during the entire last 12 months of the 60- month federal time-limit; or

(vi) was unable to obtain employment during the last 12 months of the 60-month time-limit and has no more than one noncompliance with Choices requirements during his 60-month time-limit period. Further, unemployment during the last 12-month period is not a result of a voluntary quit of a job. Employment for the purpose of this subparagraph is defined as employment that would produce earnings resulting in TANF ineligibility, without considering the Earned Income Disregard. Employment does not include seasonal work such as work performed by migrant and seasonal farm workers.

(2) Eligibility for benefits under subparagraphs (B)(iv), (v), and (vi) of this subsection is limited to 24 cumulative months. Months in which the individual was exempt from or had good cause for not participating in Choices count toward the 24-month limit.

(3) A family receiving benefits detailed in subsection (d)(1) of this section loses its eligibility for extended TANF benefits permanently if the caretaker or second parent fails to comply with Choices or child support requirements without good cause.

(4) Eligibility for benefits detailed in subparagraphs (B)(i) and (ii) of this subsection requires that the disabled family member apply for Supplemental Security Income (SSI) benefits if an application has not already been made. In lieu of SSI application and approval, eligibility for benefits under subparagraph (B)(ii) of this subsection will be extended if the disabled family member is receiving Community Care Services.

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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SUBCHAPTER TT. WORKFORCE ORIENTATION

40 TAC §§3.7301 - 3.7303

The Texas Department of Human Services (DHS) adopts amendments to §§3.7301- 3.7303, without changes to the proposed text published in the August 23, 2002, issue of the *Texas Register* (27 TexReg 7781).

Justification for the amendments is to expand Workforce Orientation requirements. DHS rules currently require applicants initially applying for Temporary Assistance for Needy Families (TANF)/TANF-SP to attend a Workforce Orientation provided by a local workforce development board as a condition of receiving assistance. The rules, however, do not impose this requirement on certain individuals meeting specific "exception" criteria. With TANF reauthorization pending and the possibility of increased federal employment participation rate requirements, DHS decided to amend its current rules to expand the number of individuals who must attend the orientation. In addition, DHS amended the requirement for attending a Workforce Orientation for individuals who apply for an extension of their TANF benefits on the basis of hardship after reaching their 60 month lifetime limit for receipt of TANF benefits.

DHS received no comments regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendments implement the Human Resources Code, §§31.001-31.081.

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

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CHAPTER 24. REIMBURSEMENT METHODOLOGY
SUBCHAPTER A. DETERMINATION OF PAYMENT RATES

40 TAC §24.101

The Texas Department of Human Services (DHS) adopts the repeal of §24.101 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8916).

Justification for the repeal is the deletion of Chapter 24, concerning an obsolete cost determination process, from the DHS rule base. Chapter 24 contains only one rule; it is obsolete because it applies to the general cost determination process for pre-1997 Cost Reports.

DHS received no comments regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

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

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CHAPTER 46. LICENSED PERSONAL CARE FACILITIES CONTRACTING WITH THE TEXAS DEPARTMENT OF HUMAN SERVICES TO PROVIDE RESIDENTIAL CARE SERVICES
SUBCHAPTER G. SUPPORT DOCUMENTS

40 TAC §46.7001

The Texas Department of Human Services (DHS) adopts the repeal of §46.7001 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8917).

Justification for the repeal is the deletion of an obsolete reimbursement methodology rule for the Residential Care Program. Cost determination process rules for pre-1997 Cost Reports are no longer in effect, and rules for 1997 and subsequent Cost Reports are in place. Having rules for cost reports for two different time periods was confusing to providers.

DHS received no comments regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER N. SUPPORT DOCUMENTS

40 TAC §§48.9801, 48.9802, 48.9805

The Texas Department of Human Services (DHS) adopts the repeal of §§48.9801, 48.9802, and 48.9805, without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8918).

Justification for the repeals is the deletion of obsolete reimbursement methodology rules for the Shared Attendant Care and Congregate and Home-Delivered Meals programs. Cost determination process rules for pre-1997 Cost Reports are no longer in effect, and rules for 1997 and subsequent Cost Reports are in place. Having rules for cost reports for two different time periods was confusing to providers.

DHS received no comments regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

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

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CHAPTER 52. EMERGENCY RESPONSE SERVICES
SUBCHAPTER E. CLAIMS

40 TAC §52.502

The Texas Department of Human Services (DHS) adopts the repeal of §52.502 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8918).

Justification for the repeal is the deletion of obsolete reimbursement methodology rules for the Emergency Response Services Program. Cost determination process rules for pre-1997 Cost Reports are no longer in effect, and rules for 1997 and subsequent Cost Reports are in place. Having rules for cost reports for two different time periods was confusing to providers.

DHS received no comments regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeal implements the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

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

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CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS
SUBCHAPTER I. REIMBURSEMENT METHODOLOGY FOR DAY ACTIVITY AND HEALTH SERVICES (DAHS)

40 TAC §§98.6901 - 98.6906

The Texas Department of Human Services (DHS) adopts the repeal of §§98.6901 - 98.6906 without changes to the proposed text published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8920).

Justification for the repeals is the deletion of obsolete reimbursement methodology rules for the Day Activity and Health Services Program. Cost determination process rules for pre-1997 Cost Reports are no longer in effect, and rules for 1997 and subsequent Cost Reports are in place. Having rules for cost reports for two different time periods was confusing to providers.

The Texas Health and Human Services Commission (HHSC) is adopting related repeals of obsolete Medicaid reimbursement methodology rules for this program in its Chapter 355 in this issue of the *Texas Register*.

DHS received no comments regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under the Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

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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Texas Department of Human Services
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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 petition filed by United Services Automobile Association and USAA Lloyds Company (collectively referred to as USAA) that requests the adoption of two new dwelling policy forms which include form nos. DP 00 03TX (Dwelling Property 3TX Special Form) and DP 00 02TX (Dwelling Property 2TX Broad Form); six new renters insurance forms which include form nos. RP-1TX (General Provisions), RP-2TX (Broad Personal Property), RP-3TX (Broad Personal Property with Replacement Cost), RP-4TX (Special Personal Property), RP-5TX (Special Personal Property with Replacement Cost), and RP-6TX (Personal Liability) and further requests the adoption of nineteen new endorsements to be used with each of these policies for use in the State of Texas.

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.

The USAA petition was filed pursuant to the Texas Insurance Code Article 5.35 (b), which provides that the Commissioner may adopt policy forms and endorsements of national insurers. USAA conforms to the definition of a national insurer and is, therefore, authorized to file its policies and endorsements with the Texas Department of Insurance to be considered by the Commissioner for adoption.

USAA's original petition on this matter, filed on February 7, 2002, requested the adoption of three new Texas dwelling policies and endorsements and six new renters policies and endorsements. Since the filing of the original petition, USAA and Department staff have engaged in discussions and dialogue relating to the proposed forms and endorsements submitted for adoption. Pursuant to these discussions, USAA has made modifications to the dwelling and renters policies and endorsements, as originally filed. USAA filed revisions to some of the renters policy forms and endorsements as originally filed by a letter dated June 12, 2002, which included the following:

1. Cancellation and non-renewal provisions were revised to comply with Article 21.49-2B;

2. The liability and medical payments exclusion of RP-6TX was revised to remove the pollutants exclusion, lead paint exclusion, asbestos exclusion, and microbial organism exclusion and the liability exclusions portion of the policy was revised to only exclude property damage liability;

3. The R-144TX Mold Coverage endorsement was revised to provide a complete buy back of the microbial organisms coverage that is excluded in the renters forms, the name of the R-144TX has been changed to "Microbial Organisms Coverage", all references to "mold" or "mold and fungus" have been changed to "microbial organisms", and language has been added to the first paragraph to further clarify and define the meaning of term "Microbial Organisms;"

4. The R-56 Additional Insured-Place of Residence endorsement was replaced by the newly created R-56TX which adds language to clarify that coverage under this endorsement does not grant membership status in USAA to the additional person covered under the endorsement and language stating that all policy provisions also apply to this endorsement;

5. The R-58 Additional Residence Rented to Others endorsement was replaced by the newly created R-58TX endorsement which includes an exclusion to the Liability and Medical Payments portion of the policy for liability arising out of mold on an insured location rented to others. USAA filed revisions to the dwelling policy forms and endorsements as originally filed by a letter dated September 26, 2002, which included the following:

1. The non-renewal provisions of dwelling policy forms DP 00 02TX, and DP 00 03TX have been revised to clarify that only a paid claim may be used for purposes of non-renewal;

2. The DP-141TX Water Damage Coverage endorsement has been revised to conform with the homeowners Water Damage Coverage endorsement to further clarify that a plumbing system includes the shower pan but not the shower stall or bath enclosure and to clarify that water damage coverage includes the cost of replacing any part of the building necessary to provide access to repair the system or appliance from which the seepage occurred;

3. The DP-143TX Slab or Foundation Coverage endorsement has been revised to remove the word "automatic" from the phrase "fire protective system" and language has been added to the last paragraph to clarify that except as modified in the endorsement, all provisions of the policy apply to the endorsement;

4. Mold Coverage endorsement DP-144TX has been revised to provide a complete buy back of the microbial organisms coverage that is excluded in the dwelling forms, to change the name of the DP-144TX to "Microbial Organisms Coverage," to change all references to "mold" or "mold and fungus" to "microbial organisms," to add language to further clarify and to define the meaning of term "Microbial Organisms," to revise the deductible provisions to clarify that in the event of a mold

loss the policy deductible will apply, and to delete language and add new language stating that no additional deductible applies to mold coverage once the policy deductible has been met.

USAA also filed revisions to renters endorsement, R-144TX Microbial Organisms Coverage endorsement as originally filed by a separate letter dated September 26, 2002, which added language to clarify that no additional deductible applies to the microbial organisms coverage once the policy deductible has been met. USAA has withdrawn dwelling form DP 00 01TX by an e-mail dated November 1, 2002, because it does not plan to issue such policy forms in Texas.

DWELLING INSURANCE PROGRAM

I. Dwelling Policies.

A. DP 00 02TX (Dwelling Property 2TX Broad Form). This form provides coverage on a broad named peril basis for dwellings, other structures, and personal property. This is similar to the Dwelling Property 3TX Special Form, described herein, except the building and other structures are insured on a broad named peril basis. This form is analogous to the Texas Dwelling Policy-Form 2 (TDP-2).

B. DP 00 3TX (Dwelling Property 3TX Broad Form). The following is a general description of the coverage provided by the proposed DP 00 3TX policy that has been filed for adoption pursuant to Article 5.35 (b). This form is analogous to the Texas Dwelling Policy Form 3 (TDP-3).

1. It covers the dwelling and other private structures on the premises against the risk of direct physical loss, with certain exceptions.

2. It covers personal property on and away from the premises against losses by fire or lightning, windstorm or hail, explosion, riot or civil commotion, aircraft, vehicular impact, smoke, vandalism or malicious mischief, and theft.

3. It provides loss of use and fair rental value which covers additional living expenses when the residence becomes uninhabitable.

II. Comparison of the Proposed USAA Dwelling Policies to the Currently Prescribed Texas Dwelling Policy-Form 3 (TDP-3). The TDP-3 has traditionally been the predominant dwelling policy form issued in Texas. In the course of staff's review of USAA's proposed dwelling policies, staff has noted several differences in the coverage provided in the TDP-3 and that provided in the proposed USAA dwelling forms. Since the proposed dwelling forms contain similar coverages (except that the DP 00 2TX is a named peril policy and the DP 00 3TX is an all risk policy) and the DP 00 3TX and the TDP-3 are analogous forms, the restrictions and enhancements in coverage will be discussed in terms of a comparison between the USAA DP 00 3TX and the TDP-3. However, it should be noted that most of the comparisons of coverage also apply to the DP 00 2TX. If more detailed coverage information is desired, a side by side comparison of the proposed DP 00 2TX dwelling policy and the TDP-2 and a side by side comparison of the proposed DP 00 3TX dwelling policy and the TDP-3 are available from the Department upon request.

III. Restrictions In Dwelling Coverage. The following is a list of some of the restrictions in coverage that are contained in the proposed DP 00 3TX dwelling policy as compared to the existing TDP-3. This list is not intended to cover every restriction in coverage that is contained in the proposed USAA policy forms.

A. Coverage for Water Damage.

The USAA policy specifies that it does not include coverage for losses to property described in Coverages A and B caused by constant or repeated seepage or leakage of water or steam over a period of weeks, months, or years from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. (See Perils Insured Against, item 2.g.) The TDP-3 does not exclude coverage for water damage from constant or repeated seepage or leakage of water or steam.

B. Coverage for Vandalism and Malicious Mischief.

The USAA policy excepts loss from vandalism or malicious mischief if the dwelling is vacant for more than 30 days immediately before a loss. (See Perils Insured Against , item 2.f.) The TDP-3 provides coverage for all perils insured against for up to 60 days of vacancy. (See Conditions, item 17.)

C. Coverage for Improvements, Alterations and Additions.

The USAA policy restricts coverage for a tenant of the Described Location to 10% of the Coverage C limit of liability for loss by a Peril Insured Against to improvements, alterations and additions, made or acquired at the tenant's expense. (See Coverages, Other Coverages, item 3.) The coverage amount provided by the TDP-3 for this coverage is the entire Coverage B (Personal Property) limit of liability. (See Coverages, Extensions of Coverage, item 4.)

D. USAA Policy Exclusions.

1. The USAA policy excludes loss caused by microbial organisms including but not limited to mold, mold spores, fungus, bacterium, and parasitic microorganisms. (See General Exclusions, item 1.i.) Pursuant to Commissioner's Order No. 01-1105, the TDP-3 modified by Endorsement No. TDP-005A provides coverage for removal of ensuing mold, fungi, or other microbial losses caused by sudden and accidental discharge, leakage or overflow of water if the water loss is a covered loss. However, the modified TDP-3 does not provide coverage for the remediation of mold or fungus.

2. The USAA policy excludes loss caused by faulty, inadequate or defective planning, zoning, development, surveying, siting, design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction; materials used in repair, construction, renovation, remodeling or maintenance of part or all of any property whether on or off the Described Location. (See General Exclusions, item 2. c.) The TDP-3 does not contain this exclusion.

3. USAA excludes settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings. (See General Exclusions, 1. j.) The TDP-3 provides coverage for an ensuing loss caused by a covered water loss to foundations, walls, floors, ceilings, roof structures, walks, drives, curbs, fences, retaining walls or swimming pools. (See General Exclusions 1. i.)

E. Coverage for Personal Property.

1. The USAA policy does not provide coverage for business property. (See Coverages, Coverage C-Personal Property) The TDP-3 provides coverage for business personal property while it is on the described location. (See Coverage B-Personal Property)

2. The USAA policy does not provide coverage for data, including data stored in books of account, drawings or other paper records, or electronic data processing tapes, wires, records, discs or other software media. (See Coverages, Coverage C - Personal Property, Property Not Covered, item 6.) The TDP-3 does not contain this exception.

3. The USAA policy does not provide coverage for watercraft, other than rowboats and canoes. (See Coverages, Coverage C, Personal Property, Property Not Covered, item 5.) The TDP-3 provides coverage for watercraft including outboard motors and furnishings or equipment while located on the described location. (See Coverages, Coverage B (Personal Property), Property Not Covered, item 7., exception.)

4. The USAA policy does not provide coverage for credit cards or fund transfer cards. (See Coverages, Coverage C - Personal Property, Property Not Covered, item 7.) The TDP-3 does not contain this exception.

IV. Dwelling Coverage Enhancements. The following is a list of some of the areas where the proposed USAA DP 00 3TX provides coverage that is broader than the coverage provided in the TDP-3. This list is not intended to cover every enhancement in coverage that is contained in the proposed USAA dwelling policy forms.

A. The USAA policy provides up to $500 for covered damage to any one tree, shrub or plant. (See Coverages, Other Coverages, item 8.) The TDP-3 provides up to $250 for covered damage to any one tree, shrub or plant. (See Coverages, Extensions Of Coverage, item 3.)

B. The USAA policy provides up to $500 of additional insurance, with no deductible, for liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. (See Coverages, Other Coverages, item 9.) The TDP-3 does not provide this coverage.

C. The USAA policy provides coverage for the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window; and damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window. (See Coverages, Other Coverages, item 11.) The TDP-3 does not provide similar coverage.

V. USAA Dwelling Endorsements. In addition to the two proposed dwelling policy forms filed for adoption, USAA has filed endorsements for attachment to each of the policies for adoption pursuant to Article 5.35 (b). Since the proposed USAA policies contain notable restrictions in the water damage coverage and the dwelling foundation coverage as compared to the coverage contained in the TDP-3, a general description of the coverage that will be provided by the proposed USAA Slab or Foundation Coverage endorsement and Water Damage Coverage endorsement is provided. Additionally, a description of the coverage that will be provided by the proposed USAA Microbial Organisms Coverage endorsement is provided.

A. Slab or Foundation Coverage Endorsement.

The proposed endorsement provides coverage up to $15,000 for damage to the slab or foundation of the building, if the damage is caused directly by accidental discharge or leakage of water or steam, including constant or repeated seepage over a period of weeks, months, or years from within a plumbing, heating, air conditioning or fire protective sprinkler system or from within a household appliance. The tear out provisions provide two options: (1) the cost of tearing out and replacing any part of the building necessary to repair or replace the plumbing, heating, air conditioning or fire protective sprinkler system or household appliance from which the water or steam escaped, or (2) the cost to reroute the plumbing, heating, air conditioning or fire protective sprinkler system or household appliance. USAA will pay the cost that is actually incurred for either of these options with the choice of options being up to the insured. The endorsement further specifies that the tear out costs are included in the $15,000 limit of liability. The Slab or Foundation Coverage applies only in the event of accidental discharge or leakage of water or steam, including constant or repeated seepage over a period of weeks, months, or years and does not affect any coverage provided elsewhere in the policy. The loss to the system from which the water or steam escaped is not covered. The endorsement does not provide coverage for settling, cracking, shrinking, bulging, or expansion of pavements, patios, walls, floors, roofs, or ceilings whether caused directly or indirectly by accidental discharge or leakage of water including constant or repeated seepage or leakage of steam or water over a period of time from within a plumbing, heating, air conditioning or fire protective sprinkler system or household appliance, except as specifically provided in the Slab or Foundation Coverage endorsement, regardless of any other cause or event contributing concurrently or in any sequence to the loss. The endorsement specifies that the attachment of the Slab or Foundation Coverage Endorsement does not increase the limit of liability that applies to the covered property. The endorsement further specifies that the exclusions in the policy for slab damage caused by constant or repeated leakage or seepage of water or steam (Perils Insured Against, Item 2.g. and General Exclusions Item 1.j.) do not apply to the coverage provided in the Slab or Foundation Coverage Endorsement. In contrast, the TDP-3 provides dwelling foundation coverage up to the total limit of insurance for Coverage A-Dwelling.

B. Water Damage Coverage Endorsement.

The proposed endorsement provides coverage for direct physical loss consisting of water damage to property described in Coverage A-Dwelling, Coverage B-Other Structures, and Coverage C-Personal Property caused by the constant or repeated seepage or leakage of water or steam over a period of weeks, months, or years from within a heating, air conditioning or fire protective sprinkler system; household appliances; or plumbing system. A plumbing system includes a shower pan, but does not include the shower stall or shower bath enclosure. The coverage includes the cost of tearing out and replacing any part of the building necessary to provide access to repair the system or appliance from which the seepage or leakage occurred. The endorsement does not provide coverage for damage caused by constant or repeated seepage or leakage of steam or water, except as specifically provided in the Water Damage Coverage endorsement, regardless of any other cause or event contributing concurrently or in any sequence to the loss. The endorsement specifies that the attachment of the Water Damage Coverage endorsement does not increase the limit of liability that applies to the covered property. The endorsement further specifies that the exclusion in the policy for water damage caused by constant or repeated leakage or seepage of water or steam (Perils Insured Against, Item 2.g.) does not apply to the coverage provided in the Water Damage Coverage endorsement.

C. Microbial Organisms Coverage Endorsement.

The proposed endorsement provides coverage for direct physical loss to property covered under Coverage A-Dwelling, Coverage B-Other Structures, and Coverage C-Personal Property caused by or consisting of microbial organisms if the microbial organism is the direct result of a Peril Insured Against or coverage provided under Other Coverages. The coverage does not apply if the loss results from the insured's failure to reasonably maintain or protect the property from further damage following a covered loss. The coverage includes any remediation of the microbial organisms including the following costs to: (1) treat, contain, remove or dispose of microbial organisms from covered property or to repair, restore, or replace the covered property; (2) test to detect, measure, or evaluate microbial organisms and any decontamination of the covered property. The endorsement provides coverage under Coverage D-Fair Rental Value and Coverage E-Additional Living Expenses when the described location is uninhabitable due to a loss caused by microbial organisms which is the direct result of a Peril Insured Against or coverage provided under Other Coverages. The endorsement specifies that the microbial organisms coverage provided in this endorsement is the only coverage provided under Coverage A-Dwelling, Coverage B-Other Structures, and Coverage E-Additional Living Expenses, regardless of any other cause or event contributing concurrently or in any sequence to the loss. The limits of liability available for microbial organisms coverage are $25,000, $50,000, $75,000, or 100% of the Coverage A-Dwelling limit of liability. The endorsement specifies

that the most that USAA will pay under the policy for a microbial organisms loss in any one policy period is the Limit of Liability shown on the Microbial Organisms Coverage endorsement regardless of: (1) of the number of covered losses that contribute to the resulting mold; or (2) the number of claims made during the policy period. The endorsement specifies that the attachment of the Microbial Organisms Coverage endorsement does not increase the limit of liability that applies to the damaged covered property, Fair Rental Value, or Additional Living Expenses and that no deductible applies to this coverage. The endorsement specifies that except as specifically modified in the Microbial Organisms Coverage endorsement, USAA does not provide coverage for damage caused by microbial organisms regardless of any other cause or event contributing concurrently or in any sequence to the loss. The endorsement further specifies that the exclusion in the policy for microbial organisms including mold and fungus (General Exclusions, Item 1.i.) does not apply to the coverage provided in the Microbial Organisms Coverage endorsement. In contrast, the Mold, Fungi, or Other Coverage endorsement that may be attached to the TDP-3 is available with limits of liability in the amounts of 25%, 50%, or 100% of the Coverage A (Dwelling) amount of insurance.

RENTERS INSURANCE PROGRAM

VI. Renters Policies. The foundation of the policy consists of a declarations page and an RP-1TX which is the general provisions form that is attached to each renters policy. If the insured wants only property coverage, then one of the property coverage forms is attached which may include any one of the following: RP-2TX (Broad Personal Property), RP-3TX (Broad Personal Property with Replacement Cost), RP-4TX (Special Personal Property), and RP-5TX (Special Personal Property with Replacement Cost). If an insured wants personal liability coverage, in addition to the property coverage, he/she may also elect to have an RP-6TX (Personal Liability) attached to the renters policy. If the insured wants only liability coverage, then the RP-6TX is attached without the attachment of any of the property coverage forms.

A. RP-1TX (General Provisions). This form is attached to each renters policy and it contains general provisions including (but not limited to) the insuring agreement, definitions, fraud provisions, waiver or policy change provisions, policy period provisions, and cancellation and nonrenewal provisions that apply to each policy.

B. RP-2TX (Broad Personal Property). This form covers personal property on and away from the premises against loss by fire, extended coverage, vandalism and malicious mischief, theft, and certain other perils on a broad named peril basis. This form is analogous to the coverage contained in the Texas Homeowners Tenant-Form B (HO-BT).

C. RP-3TX (Broad Personal Property with Replacement Cost). This form covers personal property on and away from the premises against loss by fire, extended coverage, vandalism and malicious mischief, theft, and certain other perils on a broad named peril basis and it includes replacement cost loss settlement provisions.

D. RP-4TX (Special Personal Property). This form provides coverage on an all risk of physical loss basis for personal property on and away from the premises. This form is analogous to the coverage contained in the Texas Homeowners Tenant-Form C (HO-CT).

E. RP-5TX (Special Personal Property with Replacement Cost). This form provides coverage on an all risk of physical loss basis for personal property on and away from the premises and it includes replacement cost loss settlement provisions.

F. RP-6TX (Personal Liability). This form provides personal liability coverage which may be attached to the renters policy at the option of the insured.

VII. Comparison of the Proposed USAA Renters Policies to the Currently Prescribed Texas Homeowners Tenant Policy Form B (HO-BT). The HO-BT has traditionally been the predominant tenant policy form issued in Texas. In the course of staff's review of USAA's proposed renters policies, staff has noted several differences in the coverage provided in the HO-BT and that provided in the proposed USAA renters forms. Since the proposed renters forms contain similar coverages (except that the RP-2TX and RP-3TX are named peril policies and the RP-4TX and the RP-5TX are all risk policies) and the RP-2TX and the HO-BT are analogous, forms the restrictions and enhancements in coverage will be discussed in terms of a comparison between the USAA RP-2TX and the HO-BT. However, it should be noted that most of the comparisons of coverage also apply to the RP-3TX, RP-4TX, and the RP-5TX. If more detailed coverage information is desired, side by side comparisons of the proposed RP-1TX, RP-2TX, RP-3TX, RP-4TX, and RP-5TX are available from the Department upon request.

VIII. Restrictions In Renters Coverage. The following is a list of some of the restrictions in coverage that are contained in the proposed Renters Protection Policy-Texas Broad Personal Property policy, RP-2TX, as compared to the existing HO-BT. This list is not intended to cover every restriction in coverage that is contained in the proposed USAA policy forms.

A. Coverage for Boats, Boat Trailers, and Other Trailers.

The USAA policy provides up to $1,000 in coverage for watercraft, including their trailers, their attached equipment and accessories, and outboard motors and other trailers not used with watercraft for losses that occur on and off premises for named perils. The USAA policy also limits coverage for trailers not used with watercraft to $1,000. (See Dollar Limits on Some Property, items 7. and 8.) The HO-BT provides coverage up to the limits of liability that apply to Coverage B (Personal Property) for boats and boat trailers while located on land on the residence premises for all perils insured against. Additionally, the HO-BT provides coverage up to the limits of liability that apply to Coverage B (Personal Property) for trailers designed for use principally off public roads (e.g., travel trailers) whether on or off premises. (See Section 1-Property Coverage, Coverage B (Personal Property), Property Not Covered, items 4. and 6.)

B. Coverage for Firearms.

The USAA policy limits the coverage for firearms and their equipment and accessories to losses by the peril of theft with a maximum limit of liability of $2,000. (See Dollar Limits on Some Property, item 4.) The HO-BT provides coverage for firearms to the extent described under the Perils Insured Against section of the policy, including the peril of theft, up to the limits of liability that apply to Coverage B (Personal Property.)

C. Coverage for Goldware and Silverware.

The USAA policy limits the coverage for goldware, gold-plated ware, silverware, silver-plated ware, and pewterware to losses by the peril of theft with a maximum limit of liability of $2,500. (See Dollar Limits on Some Property, item 2.) The HO-BT provides coverage for goldware and silverware to the extent described under the Perils Insured Against section of the policy, including the peril of theft, up to the limits of liability that apply to Coverage B (Personal Property.)

D. Coverage for Golf Carts. The USAA policy provides $3,000 coverage for golf carts and their equipment and accessories. (See Dollar Limits on Some Property, item 1.) The HO-BT provides coverage for golf carts up to the limits of liability that apply to Coverage B (Personal Property) to the extent described under the Perils Insured Against section of the policy. (See Section I - Property Coverage, Coverage B (Personal Property) Property Not Covered, item 3.c.)

E. USAA Policy Exclusions.

The USAA policy excludes loss caused by microbial organisms including but not limited to mold, mold spores, fungus, bacterium, parasitic microorganisms and wet or dry rot. (See Descriptions and Limitations, Causes of Loss Not Covered, item 6.) Pursuant to Commissioner's Order No. 01-1105, the HO-BT modified by endorsement no. HO-164A provides coverage for removal of ensuing mold, fungi, or other microbial losses caused by sudden and accidental discharge, leakage or overflow of water if the water loss is a covered loss. However, the modified HO-BT does not provide coverage for the remediation of mold or fungus.

F. Business Property.

The USAA policy does not provide coverage for business data stored in books of account, drawings or other paper records, or electronic data processing tapes, wires, records, discs, or other software media. (See Property Not Covered, item 5.) The HO-BT does not contain this exception.

G. Coverage for Loss of Use.

The USAA policy limits the time allowable for payment of Additional Living Expense and Fair Rental Value to 12 months. (See The Following Are Additional Coverages, Loss of Use, items 1. and 2.) The HO-BT does not have a time limitation for the payment of Additional Living Expense and Fair Rental Value.

IX. Renters Coverage Enhancements. The following is a list of some of the areas where the proposed USAA Renters Protection Policy-Texas Broad Personal Property policy, RP-2TX, provides coverage that is broader than the coverage provided in the HO-BT. This list is not intended to cover every enhancement in coverage that is contained in the proposed USAA renters policy forms.

A. Personal Property, Special Limits of Liability.

1. The USAA policy provides a $200 limit of liability for losses of money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals, food stamps, gasoline coupons, and tokens. (See Dollar Limits on Some Property, item 9.) The HO-BT provides a $100 limit of liability for losses of money. (See Section I - Property Coverage, Coverage B (Personal Property), Special Limits of Liability, item 1.)

2. The USAA policy provides a $1,000 limit of liability for loss of securities, accounts, deeds, evidences of debt, personal records, letters of credit, notes other than bank notes, manuscripts, passports, airline or other transportation tickets, stamps including postage stamps, and other philatelic property. (See Dollar Limits on Some Property, item 6.) The HO-BT provides a $500 limit of liability for these items. (See Section I - Property Coverage, Coverage B (Personal Property), Special Limits of Liability, item 2.)

3. The USAA policy provides a $1,000 limit of liability for watercraft including their trailers, their attached equipment and accessories, and outboard motors and other trailers not used with watercraft while away from the insured location. The USAA policy also provides up to $1,000 coverage for trailers not used with watercraft while away from the insured location. (See Dollar Limits on Some Property, items 7. and 8.) The HO-BT excludes coverage for boats and boat trailers while away from the residence premises. (See Section I - Property Coverage, Property Not Covered, items 4. b. and 6.)

4. The USAA policy provides $1,000 coverage for loss by theft of jewelry, watches, precious and semi-precious stones, and furs. (See Dollar Limits on Some Property, item 5.) The HO-BT provides a $500 limit of liability for loss by theft of gems, watches, jewelry or furs. (See Section I - Property Coverage, Coverage B (Personal Property), Special Limits of Liability, item 3.)

5. The USAA policy provides $250 coverage for business property away from the residence. (See Dollar Limits on Some Property, item 3.(b)) The HO-BT does not provide coverage for business property away from the residence premises. (See Section I - Property Coverage, Coverage B (Personal Property), Special Limits of Liability, item 4. b.)

B. Additional Coverages.

1. The USAA policy provides an additional 5% of the limit of liability that applies to the damaged property for debris removal if the actual property damage and debris removal exceeds the limit of liability for the damaged property. (See The Following Are Additional Coverages, Debris Removal) The HO-BT's debris removal coverage is included in the limit of liability that applies to the damaged property and does not add additional coverage. (See Section I - Property Coverage, Coverage B (Personal Property), Extensions of Coverage, item 1.)

2. The USAA policy pays up to $1,000 for loss and defense costs relating to the theft or unauthorized use of credit cards or fund transfer cards, forgery or alteration of any check or negotiable instrument, acceptance in good faith of counterfeit paper currency. This coverage is additional insurance. No deductible applies to this coverage. (See The Following Are Additional Coverages, Credit Card, Fund Transfer Card, Forgery and Counterfeit Money) The HO-BT provides a $100 limit of liability (subject to a deductible) for loss by theft or unauthorized use of bank fund transfer cards. (See Section 1 - Property Coverage, Coverage B (Personal Property), Special Limits of Liability, item 1.)

3. The USAA policy provides $250 coverage for lock replacement, with no deductible, if the residence door keys are stolen. (See The Following Are Additional Coverages, Lock Replacement) The HO-BT does not provide similar coverage.

4. The USAA policy provides flood coverage. (See Descriptions and Limitations, item 3.) The HO-BT does not provide this coverage.

5. The USAA policy provides coverage for volcanic eruption. (See Descriptions and Limitations, item 17.) The HO-BT does not provide this coverage.

6. The USAA policy provides moving and storage coverage for an insured's property while in the custody of a public or government carrier. In addition to the Causes of Loss Covered as outlined in the policy, coverage is provided for: loss of property if it cannot be located after reasonable search, when described under a bill of lading, mover's contract, baggage check, or other form of shipping or storage document; loss or damage caused by the stranding, sinking, overturning, crashing, ditching, derailment, burning or collision of a public conveyance; loss or damage caused by water except as specifically excluded; and the insured's share of general average and salvage charges. (See The Following are Additional Coverages, Moving and Storage) The HO-BT provide 10% of Coverage B for property in transit.

7. USAA has no dollar limitation on Loss of Use coverage. (See The Following are Additional Coverages, Loss of Use) The HO-BT limits Loss of Use to 20% of the Coverage B (Personal Property) limit of liability. (See Section I - Property Coverages, Coverage B (Personal Property), Extensions of Coverage, item 2.)

8. The USAA policy provides up to $500 of additional insurance, with no deductible, for liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from one of the covered losses. (See The Following are Additional Coverages, Fire Department Service Charge) The HO-BT does not provide this coverage.

X. USAA Renters Endorsements. In addition to the six proposed renters policy forms filed for adoption, USAA has filed endorsements for adoption pursuant to Article 5.35 (b). The proposed USAA renters forms do not exclude water damage caused by constant or repeated seepage from a plumbing system, therefore, a buy back endorsement for water damage coverage is not necessary. Since the proposed USAA renters forms exclude coverage for mold damage losses, a description of the coverage that will be provided by the proposed USAA Microbial Organisms Coverage Endorsement is provided. The Microbial Organisms Coverage endorsement provides coverage for direct physical loss to covered property caused by or consisting of microbial organisms if the microbial organism is the direct result of a Cause of Covered Loss. The coverage does not apply if the loss results from the insured's failure to reasonably maintain or protect the property from further damage following a covered loss. The coverage includes any remediation of the microbial organisms including the following costs to: (1) treat, contain, remove or dispose of mold or fungus from covered property or to repair, restore, or replace the covered property; (2) test to detect, measure, or evaluate microbial organisms and any decontamination of the covered property. The coverage further includes payment for any necessary increase in costs which the insured incurs to maintain his/her normal standard of living when the place where the insured resides is uninhabitable due to a covered loss caused by microbial organisms which is the direct result of a Cause of Covered Loss. The endorsement specifies that the most USAA will pay under the endorsement for covered property and Loss of Use combined, in any one policy period, is the limit of liability shown on the Microbial Organism Coverage endorsement regardless of (1) the number of covered losses that contribute to the resulting mold; or (2) the number of claims made during the policy period. The endorsement further specifies that it does not change the amount shown on the Declarations Page for Personal Property. The limits of liability available for microbial organisms coverage are $25,000, $50,000, $75,000, or 100% of the limit of liability shown on the Declarations Page for Personal Property. The endorsement specifies that except as specifically modified in the Microbial Organisms Coverage Endorsement, USAA does not provide coverage for damage caused by microbial organisms regardless of any other cause or event contributing concurrently or in any sequence to the loss. The endorsement further specifies that the exclusion in the policy for microbial organisms including mold and fungus (Causes of Loss Not Covered, Item 6.) does not apply to the coverage provided in the Microbial Organisms Coverage Endorsement. The endorsement also specifies that all provisions of the policy apply to the Microbial Organisms Coverage Endorsement, except as specifically modified by the endorsement. In contrast, the Mold, Fungi, or Other Coverage endorsement that may be attached to the TDP-3 is available with limits of liability in the amounts of 25%, 50%, or 100% of the Coverage A (Dwelling) amount of insurance.

XI. USAA's Plan to Implement the Proposed Dwelling Policy Forms. USAA has informed the Department that when its proposed dwelling policy forms have been adopted, the proposed policy forms will be phased in for use with USAA policyholders while the dwelling policy forms promulgated by TDI will be discontinued for use with USAA policyholders. USAA has outlined the details of its plan to implement the proposed dwelling policy forms as follows:

A. New Business.

Once the proposed dwelling policy forms are adopted, USAA will write all new dwelling business on the DP 00 3TX form. The proposed DP 00 03TX policy form limits coverage for dwelling foundation losses and water damage losses and excludes mold damage losses. At the time each new policy is issued, the applicant will be offered the Slab or Foundation Coverage, Water Damage Coverage, and Microbial Organisms Coverage endorsements subject to USAA's underwriting guidelines. USAA will write all new rented condominiums and contents only coverage on the DP 00 02TX form. The proposed DP 00 2TX policy form limits coverage for water damage losses and excludes mold damage losses. At the time each new policy is issued, the applicant will be offered the Water Damage Coverage and Microbial Organisms Coverage endorsements subject to USAA's underwriting guidelines. As a follow up, a notice will be included in the policy packet the customer receives which will explain the coverage and give the customer another chance to purchase the coverage options. Coverage must be requested within 30 days of policy issuance. If a policyholder desires to continue the dwelling foundation coverage (subject to the $15,000 cap), the water damage coverage, and the mold coverage that the policyholder essentially has under the TDP-3, the Slab or Foundation Coverage, Water Damage Coverage, and Microbial Organisms Coverage endorsements must be purchased for an additional premium.

B. Existing Business.

The TDP-3, TDP-2 and TDP-1 dwelling policies other than for rented condominium policies, that are in force at the time of conversion will be non-renewed and the consumer will be offered the DP 00 03TX policy without the Slab or Foundation Coverage, Water Damage Coverage, or Microbial Organisms Coverage endorsements. There will be an exception for policies that were previously endorsed with the TDP-144 or TDP-146 endorsements which will be renewed with the Microbial Organisms Coverage endorsement attached. TDP-2 policies that are in force for rented condominiums at the time of conversion will be non-renewed and offered the DP 00 02TX policy without the Water Damage or Microbial Organisms endorsements. There will be an exception for policies that were previously endorsed with the TDP- 146 endorsement which will be renewed with the Microbial Organisms Coverage endorsement attached. The new policy packet will contain a cover sheet message calling the customer's attention to information in the packet regarding the various policy changes. This information will also include an explanation of these endorsements and their availability for purchase subject to current underwriting guidelines.

XII. USAA's Plan to Implement the Proposed Renters Policy Forms. USAA has informed the Department that when its proposed renters policy forms have been adopted, the proposed policy forms will be phased in for use with USAA policyholders while the tenant policy forms promulgated by TDI will be discontinued for use with USAA policyholders. USAA has outlined the details of its plan to implement the proposed renters policy forms as follows:

A. New Business.

Once the proposed renters policy forms are adopted, USAA will write all new business on the proposed new forms. The proposed renters forms exclude coverage for mold damage losses. At the time each new renters policy is issued, the applicant will be offered the Microbial Organisms Coverage endorsement subject to USAA's underwriting guidelines. As a follow up, a notice will be included in the policy packet the customer receives which will explain the coverage and give the customer another chance to purchase this coverage option. Coverage must be requested within 30 days of policy issuance. If a policyholder desires to continue the mold coverage that the policyholder essentially has under the HO-BT, the Microbial Organisms Coverage endorsement must be purchased for an additional premium.

B. Existing Business.

Texas Homeowners Tenant-Form B (HO-BT) policies that are in force at the time of conversion will be non-renewed and offered the USAA

Renters policy without the Microbial Organisms Coverage endorsement. There will be an exception for policies that were previously endorsed with the HO-164T endorsement which will be renewed with the Microbial Organisms Coverage endorsement attached. The new policy packet will contain a cover sheet message calling the customer's attention to information in the packet regarding the various policy changes. This information will also include an explanation of the Microbial Organisms Coverage endorsement and its availability for purchase subject to current underwriting guidelines.

XIII. Consumer Disclosures. USAA agrees to provide an explanatory letter and a summary of coverages expressly noting where there is less coverage in the USAA policies than in the currently prescribed policies to the policyholders who are being converted from the currently prescribed Texas forms to the proposed USAA forms. This notice letter will be sent to the policyholders sixty (60) days in advance of the policy conversion date. This notice letter will be provided to the Department for its review prior to USAA's use of this letter.

XIV. Rating Information. USAA agrees to file its initial rates and any rate changes for policies written through USAA Lloyds with the Department on an informational basis for a period of two years to allow the Department to monitor the rates on the new USAA policies. USAA also agrees to provide the Department with a copy of its loss cost analyses during the time period it is providing the rating information.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35 and 5.96.

A copy of the petition, including the exhibits with the full text of the proposed policy forms and endorsements and side by side comparisons of the proposed USAA dwelling and renters policies and the corresponding Texas promulgated forms, and a copy of the exempt filing notice are 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, side by side comparisons, and the exempt filing notice, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. P-0202-4).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on December 30, 2002 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 the comments is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200207526
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 18, 2002

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 Department on Aging

Title 40, Part 9

The Texas Department on Aging announces its intent to review and consider for re-adoption, repeal or revision Chapter 260, relating to Area Agency on Aging Administrative Requirements, in accordance with the Government Code, §2001.039. Chapter 260 contains the following sections:

§260.1. Area Agency on Aging Administrative Responsibilities.

§260.2. Area Agency on Aging Fiscal Responsibilities.

§260.3. System of Access and Assistance.

§260.4. Certification of Benefits Counselors Regarding the Preparation of Advanced Directives.

§260.11. Ombudsman Services.

§260.14. Corporate Eldercare.

§260.15. Criteria for Administering Carryover of Unexpended Funds.

§260.17. Approval of Direct Services Applications from Area Agencies on Aging.

§260.19. Direct Purchase of Service (DPS).

§260.21. Public Hearing Procedures for Area Agencies on Aging.

Comments on the proposal may be submitted, no later than 30 days from publication of this notice, to Gary Jessee, Director of the Office of AAA Support and Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711. All comments must be written and delivered via mail, in person, or facsimile. E-mail and verbal comments cannot be accepted. All comments must be received within 30 calendar days following the date of publication of the proposed rule review in the *Texas Register*.

TRD-200207511
Gary Jessee
Aging Network Policy Coordinator
Texas Department on Aging
Filed: November 18, 2002

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 150 continues to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499.

TRD-200207513
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: November 18, 2002

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 153, School District Personnel, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 153 continues to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499.

TRD-200207514
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: November 18, 2002

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 1, Purpose of Rules, General Provisions.

This review of Chapter 1 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 1 states that the purpose of the commission's rules is to implement statutory authorizations and to establish the general policies of the commission. The chapter also sets forth procedures to be followed in agency proceedings, addresses open records request matters, and contains basic information concerning the Texas Commission on Environmental Quality, including the business office and mailing address of the agency. This rules review proposes to readopt the rules without any changes. The fiscal implications to state and local government and analysis of the costs and benefits to the public relating to previous adoptions of the rules apply to the rules review.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 1 continue to exist. The rules are needed to provide basic information about the agency and to set forth procedures concerning agency proceedings and open record requests.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 1. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-018-001-AD. Comments must be received by 5:00 p.m., December 30, 2002. For further information or questions concerning this proposal, please contact Clifton Wise, Policy and Regulations Division, at (512) 239-2263.

TRD-200207528
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 18, 2002

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The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 5, Advisory Committees and Groups.

This review of Chapter 5 is proposed in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, Chapter 1499, §1.11(a), which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 5 provides the authority and procedures for the commission, executive director, and staff for creating advisory committees and groups for the purpose of receiving advice on specific matters. The chapter establishes requirements, procedures, and policies relating to the creation, duties, operation, and duration of advisory committees and groups. The chapter is divided into three subchapters.

Subchapter A establishes a common purpose and definitions for the other two subchapters. The subchapter includes a definition for "balanced representation" which, by statute, the commission, executive director, and staff are required to make reasonable attempts to achieve in the creation of advisory committees and groups.

Subchapter B addresses advisory committees, which for the purposes of this subchapter are those committees created by the commission or by state law for the purpose of providing advice to the commission.

Subchapter C addresses advisory groups.

This rules review proposes to readopt the rules without any changes. The fiscal implications to state and local government and analysis of the costs and benefits to the public relating to previous adoptions of the rules apply to the rules review.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 5 continue to exist. The rules are needed to implement requirements of Texas Water Code, §5.107, relating to Advisory Councils, and particularly the additional authority and requirements added to §5.107 by House Bill (HB) 2912, §1.10, 77th Legislature, 2001. The rules are also needed to implement requirements of Texas Government Code, Chapter 2110, relating to Agency Advisory Committees, including clarifications that were provided by HB 2914, Article 45, 77th Legislature, 2001.

In a separate rulemaking, Rule Log Number 2002-054-005-AD, the commission proposes to amend §5.13 to allow advisory committees and subcommittees to meet in closed session for the purpose of reviewing and developing license examination questions and related materials.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on whether the reasons for the rules in Chapter 5 continue to exist. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711- 3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-020-005- AD. Comments must be received in writing by 5:00 p.m., December 30, 2002. For further information or questions concerning this proposal, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

TRD-200207529
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 19, 2002

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 69, Regulation of Certain Transportation Service Providers. This review and consideration is being conducted in accordance with the requirements of Texas

Government Code, §2001.039, added by Acts 1999, 76th Legislature, ch. 1499, §1.11(a).

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Chris Kadas, General Counsel, P. O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-2872, or by e-mail, chris.kadas@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

16 TAC §69.1. Authority

16 TAC §69.10. Definitions

16 TAC §69.20. Certificate of Registration Requirements--General

16 TAC §69.21. Certificate of Registration Requirements--Specific

16 TAC §69.22. Certificate of Registration--Renewal

16 TAC §69.60. Responsibilities of the Department

16 TAC §69.70. Responsibilities of the Certificate Holder

16 TAC §69.80. Fees

16 TAC §69.90. Sanctions--Administrative Sanctions/Penalties

16 TAC §69.91. Sanctions--Revocation, Suspension, or Denial because of a Criminal Conviction

TRD-200207436
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 14, 2002

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Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Chapter 93, §§93.101 relating to scope, definitions, and severability; 93.202 relating computation of time; 93.203 relating to ex parte communications; 93.304 relating to presiding officer or body; 93.205 relating notice of hearing; 93.206 relating to default; 93.207 relating to service; 93.208 relating to delegation of authority; 93.209 relating to subpoenas; 93.210 relating to protective orders and motions to compel; 93.211 relating to administrative record; 93.302 relating to referral to ADR; 93.501 relating to request for hearing to appeal order of conservation; and 93.605 relating to final decisions and appeals. Notice of the proposed review was published in the August 9, 2002, issue of the *Texas Register* (27 TexReg 7199).

The Commission received no comments with respect to this rule. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§93.101, 93.202, 93.203, 93.204, 93.205, 93.306, 93.207, 93.208, 93.309, 93.210, 93.211, 93.302, 93.501 and 93.605 continue to exist and readopts these sections without changes pursuant to the requirements of Government Code, Section 2001.039.

TRD-200207491
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 18, 2002

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) adopts the rules review and readopts Chapter 291, Utility Regulations, in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the September 6, 2002 issue of the *Texas Register* (27 TexReg 8617).

CHAPTER SUMMARY The rules in Chapter 291 provide a comprehensive regulatory system for retail public utilities and a fee component to fund commission review of utility matters. The rules are necessary to assure water and sewer rates, operations, and services that are just and reasonable to the consumers and to the utilities. Chapter 291 is divided into Subchapters A - K, which set forth general administrative provisions and provisions governing rate changes and appeals; recordkeeping and reporting; quality of service; service area delineations and utility transfers; submetering and allocation; wholesale water or sewer service, enforcement, and related compliance alternatives; and certain requirements applicable to utility services provided by municipalities.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 291 continue to exist. These rules implement the provisions of Texas Water Code (TWC), Chapter 13, which authorizes the commission to regulate and supervise retail public utilities within its jurisdiction. TWC, §13.041 specifically authorizes the commission to adopt and enforce rules required to perform its duties under the chapter. These rules also implement provisions of TWC, §§11.036, 11.041, and 12.013, allowing the commission to review wholesale rates for surface water, and TWC, §§5.701, 13.4521, and 13.4522 authorizing certain application filing fees and assessments.

PUBLIC COMMENT The public comment period closed on October 7, 2002. No comments were received.

TRD-200207437
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 14, 2002

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction Deadline
1	after February 1	September 1
2 - Area 1	No dates set	November 14
2 - Area 2	No dates set	November 14
2 - Area 3	No dates set	November 14
2 - Area 4	No dates set	November 14
3 - Area 1	After February 1	**November 28** [~~November 14~~]
3 - Area 2	After February 1	**November 28** [~~November 14~~]
4	No dates set	November 14
5	No dates set	**November 28** [~~November 14~~]
6	No dates set	November 28
7	after February 1	November 30
8 - Area 1	after February 1	October 31
8 - Area 2	after February 1	November 30
9	No dates set	No date set
10	No dates set	February 1

Figure: 10 TAC §49.9(f)(9)(C)

% of AMGI	# of Rent Restricted Units (a)	Portion of Rent Restricted Units (a/b)		Weight A	OR	Weight B*	Points
50%	(a)	(c)	X	5		10	
40%	(a)	(c)	X	15		20	
30%	(a)	(c)	X	30		40	
TOTAL LI TARGETED UNITS*	(b)					TOTAL POINTS =	

*Includes Units at 60% of AMGI

Figure: 19 TAC §230.601(f)

ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

PART I

REQUIREMENTS FOR ASSIGNMENT OF TEACHERS

PREKINDERGARTEN-GRADE 6

ASSIGNMENTS	CERTIFICATES (NUMERICAL CODES)
Prekindergarten (PK) Disadvantaged	Elementary—General (10) (See Notes A and B) Teacher of Young Children—General Kindergarten (14) Elementary (Grades 1-6)—General (See Notes A and B) Elementary (Grades 1-8)—General (See Notes A and B) Elementary Self-Contained (grades 1-8) (See Notes A and B) Elementary (Grades PK-6)—Early Childhood Education Early Childhood Education (Grades PK-K) Grades PK-5—General Grades PK-6—General
Bilingual	Elementary—General (10) (See Notes A, C, and F) Teacher of Young Children—General (See Notes D and F) Kindergarten (14) (See Notes D and F) Elementary (Grades 1-6)—General (See Notes A, C, and F) Elementary (Grades 1-8)—General (See Notes A, C. and F) Elementary Self-Contained (grades 1-8) (See Notes A and B) Elementary (Grades PK-6)—Early Childhood Education (See Notes D and F) Elementary teacher certification with Bilingual Endorsement (See Notes A and B) Early Childhood Education (Grades PK-K) (See Notes D and F) Grades PK-5—General (See Notes D and F) Grades PK-6—General (See Notes D and F) Grades PK-6 Bilingual/ESL Grades PK-12 Bilingual/ESL

PREKINDERGARTEN-GRADE 6

ASSIGNMENTS	CERTIFICATES (NUMERICAL CODES)
Prekindergarten (PK)	
English as a Second Language	Elementary—General (10) (See Notes A, B, and E) Teacher of Young Children—General (See Note E) Kindergarten (14) (See Note E) Elementary (Grades 1-6)—General (See Notes A, B, and E) Elementary (Grades 1-8)—General (See Notes A, B, and E) Elementary Self-Contained (grades 1-8) (See Notes A and B) Elementary (Grades PK-6)—Early Childhood Education (See Note E) Elementary teacher certificate with Bilingual or ESL Endorsement (See Notes A and B) Early Childhood Education (Grades PK-K) (See Note E) Grades PK-5—General (See Note E) Grades PK-6—General (See Note E) Grades PK-6 Bilingual/ESL Grades PK-12 Bilingual/ESL Grades PK-12 English as a Second Language

NOTES:

(A) Teachers assigned prior to the 1991-92 school year are required to complete a minimum of 90 clock hours of inservice training (may be advanced academic training) or six semester hours in early childhood education, inclusive of but not limited to child development or language acquisition, by September 1, 1993, to be eligible for assignment.

(B) Initial assignments beginning with the 1991-92 school year require the early childhood education delivery system or endorsement.

(C) Initial assignments beginning with the 1991-92 school year require the early childhood education delivery system or endorsement and the bilingual education delivery system or endorsement.

(D) Initial assignments beginning with the 1991-92 school year require the bilingual education delivery system or endorsement.

(E) Initial assignments beginning with the 1991-92 school year require the ESL endorsement or the bilingual education delivery system or endorsement.

(F) Teachers assigned prior to the 1991-92 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the Texas Education Agency by September 1, 1993, to be eligible for assignment.

Teachers holding all-level certification in art, music, physical education, or speech-drama may be assigned to teach in the certified area(s) in prekindergarten-grade 12.

PREKINDERGARTEN-GRADE 6

ASSIGNMENTS	CERTIFICATES (NUMERICAL CODES)
Kindergarten (K)	Kindergarten (14) Teacher of Young Children—General Early Childhood Education (Grades PK-K) Elementary (Grades PK-6)—Early Childhood Education Grades PK-5—General Grades PK-6—General
NOTE: Teachers holding all-level certification in art, music, physical education, or speech communication and theatre arts may be assigned to teach in the certified area(s) in prekindergarten-grade 12.	
Bilingual, Kindergarten-Grade 6	Teacher certificate appropriate for the grade level of assignment plus endorsement or area of specialization in bilingual education (or teaching field for grade 6 only) Grades PK-5—Bilingual/ESL (for grades PK-5 only) Grades PK-6—Bilingual/ESL
English as a Second Language, Kindergarten-Grade 6	Teacher certificate appropriate for the grade level of assignment plus endorsement ESL or Bilingual/ESL or Bilingual/ESL area of specialization (or teaching field for grade 6 only) Grades PK-5—Bilingual/ESL (for grades PK-5 only) Grades PK-6—Bilingual/ESL Grades PK-12—English as a Second Language Teacher certificate appropriate for grade level of assignment and assigned to teach ESL in an approved program during the 1981-82 school year in the same school district.
NOTE: An elementary certified teacher with an ESL or Bilingual Endorsement may be assigned to teach ESL at the kindergarten level.	

PREKINDERGARTEN-GRADE 6	
ASSIGNMENTS	**CERTIFICATES (NUMERICAL CODES)**
Elementary, Grades 1-6	Elementary—General (10) Teacher of Young Children—General (grades 1-3 only) Elementary (Grades 1-6)—General Elementary (Grades 1-8)—General Elementary Self-Contained (grades 1-8) Elementary (Grades PK-6)—Early Childhood Education Grades PK-5—General (grades 1-5 only) Grades PK-6—General
Art, Grades PK-6	Any teacher certificate appropriate for elementary grades 1-6 assignment All-Level—Art (06) All-Level (Grades PK -12)—Art Special Subject Art Early Childhood Education (grades pre-kindergarten and kindergarten only)
Music, Grades PK-6	Any teacher certificate appropriate for elementary grades 1-6 assignment All-Level—Music (08) All-Level (Grades PK -12)—Music Special Subject Music Early Childhood Education (grades pre-kindergarten and kindergarten only)
Languages Other Than English, Grades 1-6	Any teacher certificate appropriate for elementary grades 1-6 assignment Secondary teacher certificate with a teaching field in the language of assignment plus six semester hours of elementary education Special Subject (appropriate language)

PREKINDERGARTEN-GRADE 6

ASSIGNMENTS	CERTIFICATES (NUMERICAL CODES)
Physical Education, Grades PK-6	Any teacher certificate appropriate for elementary grades 1-6 assignment All-Level—Physical Education All-Level—Health and Physical Education (07) All-Level (Grades PK -12)—Physical Education Special Subject Physical Education Early Childhood Education (grades pre-kindergarten and kindergarten only)
Reading, Grades 1-6	Any teacher certificate appropriate for elementary grades 1-6 assignment Reading Specialist (34)
Theatre, Grades PK-6	Any teacher certificate appropriate for elementary grades 1-6 assignment All-Level—Speech and Drama (09) All-Level (Grades PK -12)—Speech Communications/Theatre Arts All-Level Theatre Arts (Grades PK – 12) Early Childhood Education (grades pre-kindergarten and kindergarten only)

NOTE: Refer to Grade 6-8 (Departmentalized) for additional certification if assignment is 6th grade Departmentalized.

MIDDLE SCHOOL-GRADES 6-8
GRADES 6-8 (SELF-CONTAINED)

ASSIGNMENTS	CERTIFICATE (NUMERICAL CODES)
All Regular Subjects in Grades 6-8 (Self-contained)	Elementary—General (10) Elementary (Grades 1-6)—General (grade 6 only) Elementary (Grades 1-8)—General Elementary Self-Contained (grades 1-8) Elementary (Grades PK-6)—Early Childhood Education (grade 6 only) Grades PK-6—General (grade 6 only)

NOTE: Self-contained is defined as a class which is taught by one teacher for 50 percent or more of the school day.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
All Regular Subjects in Grade 6	Any elementary teacher certificate appropriate for grade 6	See requirements for each subject area below
ENGLISH LANGUAGE ARTS English Language Arts	Elementary—English Elementary (Grades 1-8)—English Elementary teacher certificate plus 18 semester hours in English	Junior High School or High School— English Language Arts, Composite (26) English (22) Secondary (Grades 6-12)— English Language Arts, Composite English Grades 6-12 or Grades 6-8— English Language Arts, Composite English Secondary or All-Level teacher certificate plus 18 semester hours in English
English as a Second Language	ESL Endorsement Bilingual Endorsement Bilingual/ESL Endorsement Elementary—Bilingual Elementary (Grades 1-8)—Bilingual/ESL Grades PK-6—Bilingual/ESL (grade 6 only) Elementary teacher certificate and assigned to teach ESL in an approved program during 1981-82 in the same school district	ESL Endorsement Bilingual Endorsement Bilingual/ESL Endorsement Junior High School or High School—Bilingual/ESL Secondary (Grades 6-12)—Bilingual/ESL Grades PK-12—Bilingual/ESL Grades PK-12—ESL Secondary or All-Level teacher certificate and assigned to teach ESL in an approved program during 1981-82 in the same school district

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Reading (At or above grade level)	Elementary— Reading English** Elementary (Grades 1-8)— Reading English** Elementary teacher certificate plus 18 semester hours in English and nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques	Junior High School or High School— Reading English Language Arts, Composite (26)* English (22) Secondary (Grades 6-12)— Reading English Language Arts, Composite* English** Grades 6-12 or Grades 6-8— Reading English Language Arts, Composite* English** Reading Specialist (34) Secondary or All-Level teacher certificate plus 18 semester hours in English and nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques

* Includes at least six semester hours of reading. Initial assignments beginning with the 2003-2004 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

**Plus verifiable preparation in teaching of reading such as inservice, seminar, or college course in reading. Initial assignments beginning with the 1990-91 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Reading Improvement (One year or more below grade level)	Elementary— Reading English** Elementary (Grades 1-8)— Reading English** Elementary teacher certificate plus 18 semester hours in English and nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques	Junior High School or High School— Reading English Language Arts, Composite (26)* English (22)** Secondary (Grades 6-12)— Reading English Language Arts, Composite* English** Grades 6-12 or grades 6-8— Reading English Language Arts, Composite* English** Reading Specialist (34) Teacher certificate plus 9 semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques***

* Includes at least six semester hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

** Plus verifiable preparation in the teaching of reading such as inservice, seminar, or college course in reading. Initial assignments beginning with the 1990-91 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

*** Initial assignments beginning with the 1990-91 school year require a teaching field or specialization in English plus nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Speech	Elementary—Speech Elementary (Grades 1-8)— Speech Communications Elementary teacher certificate plus 12 semester hours in speech	Junior High School or High School— Speech (24 or 21) Speech and Drama English Language Arts, Composite (26)**** Secondary (Grades 6-12)— Speech Communications English Language Arts, Composite**** All-Level—Speech and Drama (09) All-Level (Grades PK -12)— Speech Communications/Theatre Arts Grades 6-12 or Grades 6-8— Speech Communications English Language Arts, Composite**** Secondary or All-Level teacher certificate plus 12 semester hours in speech

****Includes at least six semester hours in speech.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
LANGUAGES OTHER THAN ENGLISH Languages Other Than English	Area of specialization in language of assignment Elementary teacher certificate plus 18 semester hours in language of assignment	Teaching field in language of assignment Special Subject (appropriate language) Secondary or All-Level teacher certificate plus 18 semester hours in language of assignment
Exploratory Languages	Area of specialization in any language Elementary teacher certificate plus 18 semester hours in any language	Teaching field in any language Special Subject (any language) Secondary or All-Level teacher certificate plus 18 semester hours in any language
Cultural and Linguistic Topics	Area of specialization in any language Elementary teacher certificate plus 18 semester hours in any language	Teaching field in any language Special Subject (any language) Secondary or All-Level teacher certificate plus 18 semester hours in any language
American Sign Language		American Sign Language

NOTE: Effective with the 1998-99 school year, individuals must hold the American Sign Language (ASL) Certificate. Individuals assigned prior to the 1998-99 school year based on previous assignment criteria must pass the TASC-ASL by the 1998-99 school year to become certified in ASL and remain in the assignment.

GRADES 6-8 (DEPARTMENTALIZED)		
ASSIGNMENTS	**ELEMENTARY CERTIFICATE (NUMERICAL CODES)**	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
MATHEMATICS	Elementary—Mathematics Elementary (Grades 1-8)—Mathematics Elementary teacher certificate plus 18 semester hours in mathematics	Junior High School or High School—Mathematics (10) Mathematical Science, Composite Secondary (Grades 6-12)—Mathematics Grades 6-12 or Grades 6-8—Mathematics Secondary or All-Level teacher certificate plus 18 semester hours in Mathematics

NOTE: A teacher holding an elementary certificate (grades 1-8) with an area of specialization in mathematics may teach Algebra I at the middle school level for high school graduation credit.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
SCIENCE 6th Grade Science	Any elementary teacher certificate appropriate for Grade 6	Junior High School or High School— Biology (01) Chemistry (02) Earth Science (05) Life/Earth Middle-School Science Physical Science (06) Physics (03) Science Science, Composite (04) Secondary (Grades 6-12)— Biology Chemistry Earth Science Life/Earth Science Physical Science Physics Science Science, Composite Grades 6-12 or Grades 6-8— Biology Chemistry Earth Science Life/Earth Science Physical Science Physics Science Science, Composite Secondary or All-Level teacher certificate plus 18 semester hours in any combination of sciences

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
7th and 8th Grade Science	Elementary— Biology Chemistry Earth Science Life/Earth Middle-School Science Physical Science Physics Elementary (Grades 1-8)— Biology Chemistry Earth Science Life/Earth Middle-School Science Physical Science Physics Elementary teacher certificate plus 18 semester hours in any combination of sciences	Junior High School or High School— Biology (01) Chemistry (02) Earth Science (05) Life/Earth Middle-School Science Physical Science (06) Physics (03) Science Science, Composite (04) Secondary (Grades 6-12)— Biology Chemistry Earth Science Life/Earth Science Physical Science Physics Science Science, Composite Grades 6-12 or Grades 6-8— Biology Chemistry Earth Science Life/Earth Science Physical Science Physics Science Science, Composite Secondary or All-Level teacher certificate plus 18 semester hours in any combination of sciences

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
HEALTH	Elementary— Health Health and Physical Education Physical Education Elementary (Grades 1-8)— Health Health and Physical Education Physical Education Elementary teacher certificate plus 12 semester hours in health, mental health, consumer health, public health, biology, microbiology, anatomy, physiology, kinesiology, foods, nutrition, family relations, safety, or drug abuse prevention	Junior High School or High School— Health (81) Health and Physical Education (80) Physical Education (82) Secondary (Grades 6-12)— Health Physical Education All-Level—Health and Physical Education (07) All-Level—Physical Education All-Level (Grades PK-12)—Physical Education Grades 6-12 or Grades 6-8— Health Physical Education Secondary or All-Level teacher certificate plus 12 semester hours health, mental health, consumer health, public health, biology, microbiology, anatomy, physiology, kinesiology, foods, nutrition, family relations, safety, or drug abuse prevention
PHYSICAL EDUCATION	Elementary— Physical Education Health and Physical Education Elementary (Grades 1-8)— Physical Education Elementary teacher certificate plus 12 semester hours in physical education	Junior High School or High School— Physical Education (82) Health and Physical Education (80) Secondary (Grades 6-12)—Physical Education All-Level—Physical Education All-Level—Health and Physical Education (07) All-Level (Grades PK -12)—Physical Education Special Subject Physical Education Grades 6-12 or Grades 6-8—Physical Education Secondary or All-Level teacher certificate plus 12 semester hours in physical education

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
FINE ARTS		
Art	Elementary—Art Elementary (Grades 1-8)—Art Elementary teacher certificate plus 18 semester hours in art	Junior High School or High School—Art (50) Secondary (Grades 6-12)—Art All-Level—Art (06) All-Level (Grades PK -12)—Art Special Subject Art Grades 6-12 or Grades 6-8—Art Secondary or All-Level teacher certificate plus 18 semester hours in art
Music	Elementary—Music Elementary (Grades 1-8)—Music Elementary teacher certificate plus 18 semester hours in music	Junior High School or High School—Music (90) Secondary (Grades 6-12)—Music All-Level— Music (08) All-Level (Grades PK -12)—Music Special Subject Music Grades 6-12 or Grades 6-8—Music Secondary or All-Level teacher certificate plus 18 semester hours in music
Theatre	Elementary—Drama Elementary (Grades 1-8)—Theatre Arts Elementary teacher certificate plus 18 semester hours in theatre arts/drama	Junior High School or High School— Drama (25) Speech and Drama Secondary (Grades 6-12)—Theatre Arts All-Level—Speech and Drama (09) All-Level (Grades PK -12)— Speech Communications/Theatre Arts Theatre Arts Grades 6-12 or Grades 6-8—Theatre Arts Secondary or All-Level teacher certificate plus 18 semester hours in theatre arts/drama

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
SOCIAL STUDIES Social Studies, Grade 6	Any elementary teacher certificate appropriate for grade 6	Junior High School or High School— Anthropology (38) Economics (31) Geography (32) Government-Political Science (33) History (34) Psychology (35) Sociology (37) Social Science, Composite (36) Secondary (Grades 6-12)— Economics Geography Government History Psychology Sociology Social Studies Social Studies, Composite Grades 6-12 or Grades 6-8— Economics Geography Government History Psychology Sociology Social Studies Social Studies, Composite Secondary or All-Level teacher certificate plus 18 semester hours in social studies including 12 semester hours related to the assignment

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Social Studies, Grades 7 and 8	Elementary— History Elementary (Grades 1-8)— History Social Studies Elementary teacher certificate plus 18 semester hours in social studies including 12 semester hours related to the assignment	Junior High School or High School— History (34) Social Science, Composite (36) Secondary (Grades 6-12)— History Social Studies Social Studies, Composite Grades 6-12 or Grades 6-8 History Social Studies, Composite Social Studies Secondary or All-Level teacher certificate plus 18 semester hours in social studies including 12 semester hours related to the assignment

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
TECHNOLOGY APPLICATIONS (formerly Computer Literacy)	Elementary teacher certificate plus verification of competency to teach computer literacy Information Processing Technologies Endorsement (Level one or two)	Secondary teacher certificate plus verification of competency to teach computer literacy Information Processing Technologies Endorsement (Level one or two) Junior High School or High School—Computer Information Systems (11) Secondary (Grades 6-12)—Computer Information Systems Grades 6-12 or Grades 6-8—Computer Information Systems

NOTE: If Technology Applications essential elements are integrated with another academic course or through interdisciplinary terms, a teacher who is certified to teach the primary academic area may teach Technology Applications without additional certification. The district is responsible for seeing that teachers have the appropriate technology applications knowledge and skills, as defined in the SBEC-approved Educator Standards for Technology Applications to teach the course(s) to which they are assigned.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
CAREER ORIENTATION Career Investigation	NA	Vocational Occupational Orientation (91) Junior High School or High School— Secretarial, Business (72) Basic Business (No Shorthand) (73) Business, General, Composite (70) Business Administration (71) Secondary (Grades 6-12) Secretarial, Business Basic Business (No Shorthand) Business, General, Composite Business Administration Special Subject Commercial Subjects Grades 6-12 or Grades 6-8— Secretarial Business Basic Business (No Shorthand) Business, General, Composite Business Administration

May be taught by any degreed Career and Technology Education certified teacher with verified two years of work experience other than teaching school.

NOTE: Participation in a Texas Education Agency approved workshop for beginning career orientation teachers is required prior to teaching the course.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
TECHNOLOGY EDUCATION (previously Industrial Technology Education) (previously Industrial Arts)	NA	Junior High School or High School— Industrial Arts (60) Secondary (Grades 6-12) Industrial Arts Industrial Technology Grades 6-12 or Grades 6-8 Industrial Arts Industrial Technology Special Subject Industrial Arts
AGRICULTURAL SCIENCE AND TECHNOLOGY EDUCATION	NA	Vocational Agriculture Production Vocational Agriculture (63)

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
BUSINESS EDUCATION Business Venture Introduction to Recordkeeping Introduction to Business Support Systems Introduction to Keyboarding	For one or two classes of Keyboarding: Elementary teacher certificate plus college course in typewriting or keyboarding For three or more classes of Keyboarding: See secondary teacher certificate requirements	Junior High School or High School— Secretarial Business (72) Basic Business (73) Business, General, Composite (70) Business Administration (71)* Secondary (Grades 6-12)— Secretarial Business Basic Business Business, General, Composite Business Administration* Special Subject Commercial Subjects Grades 6-12 or Grades 6-8— Secretarial Business Business Composite Basic Business Business Administration* Vocational Office Education (98)* Vocational Office Education Cooperative and Pre-Lab* Vocational Office Education Pre-Lab* Office Education*

*Plus evidence of three semester hours of college-level credit in typing/keyboarding if teaching Keyboarding. Office Education certified personnel who have a related business degree rather than a Business Education degree also must show evidence of three semester-hours of college-level credit in typing/keyboarding if teaching Keyboarding.

NOTES:

1. The LEA shall determine computer competency for teachers certified prior to the inclusion of computing instruction in teacher education programs. Computing competency may be obtained in any one or combination of vendor-provided training, professional development conferences (hands-on classes), ESC workshops/courses, higher education courses, or private schools, etc.
2. The assignment of the non-degreed CVAE and VEH certified teachers is limited to the laboratory courses of Business Computer Information Systems I and Business Office Services.
3. With the approval of the ARD committee and the IEP for the student, any courses in the Business Education curriculum may be offered as Career and Technology Education for Students with Disabilities (CTED) formerly VEH.

GRADES 6-8 (DEPARTMENTALIZED)

ASSIGNMENTS	ELEMENTARY CERTIFICATE (NUMERICAL CODES)	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
HOME ECONOMICS EDUCATION Skills for Living	NA	Junior High School or High School— Homemaking (40) Vocational Home Economics Vocational Homemaking (64) Vocational Home Economics Education Special Subject Home Economics

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
ENGLISH LANGUAGE ARTS	
English	Junior High School (grades 9-10 only) or High School— English (22) English Language Arts, Composite (26) Secondary (Grades 6-12)— English English Language Arts, Composite Grades 6-12 or Grades 9-12— English English Language Arts, Composite
English I and II for Speakers of Other Languages	ESL Endorsement Bilingual Endorsement Bilingual/ESL Endorsement Junior High School (grades 9-10 only) or High School—Bilingual/ESL Secondary (Grades 6-12)—Bilingual/ESL Grades PK-12—Bilingual/ESL Grades PK-12—English as a Second Language Secondary or All-Level Teacher certificate and assigned to teach ESL in an approved program during 1981-82 school year in the same school district

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Reading I, II, and III	Junior High School (grades 9-10 only) or High School— Reading English Language Arts, Composite (26)* English (22)** Secondary (Grades 6-12)— Reading English Language Arts, Composite* English** Grades 6-12 or Grades 9-12— Reading English Language Arts, Composite* English** Reading Specialist (34) Secondary or All-Level teacher certificate plus 9 semester hours of upper-division course work in reading with at least one course in diagnostic reading techniques***

* Includes at least six semester hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

** Plus verifiable preparation in the teaching of reading such as inservice, seminar, or college course in reading. Initial assignments beginning with the 1990-991 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

*** Initial assignments beginning with the 1990-91 school year require a teaching field in English plus nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Reading Applications and Study Skills	Junior High School (grades 9-10 only) or High School— Reading English Language Arts, Composite (26)* English (22)** Secondary (Grades 6-12)— Reading English Language Arts, Composite* English** Grades 6-12 or Grades 9-12— Reading English Language Arts, Composite* English** Reading Specialist (34

* Includes at least six semester hours in reading. Initial assignments beginning with the 2003-2004 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

** Plus verifiable preparation in the teaching of reading such as inservice, seminar, or college course in reading. Initial assignments beginning with the 1990-991 school year require nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

*** Initial assignments beginning with the 1990-91 school year require a teaching field in English plus nine semester hours of upper-division coursework in reading with at least one course in diagnostic reading techniques.

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GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Writing Research/Technical Writing Creative/Imaginative Writing Practical Writing Skills Literary Genres Humanities Independent Study in English Analysis of Visual Media Media Literacy-Speech	Junior High School (grades 9-10 only) or High School— English (22) English Language Arts, Composite (26) Secondary (Grades 6-12)— English English Language Arts, Composite Grades 6-12 or Grades 9-12— English English Language Arts, Composite
Speech Speech Communication Oral Interpretation I-III Introduction to Radio and Television Debate I, II, III Public Speaking I-III Independent Study in Speech Communication Applications	Junior High School (grades 9-10 only) or High School— Speech (24) Speech and Drama English Language Arts, Composite (26)* Secondary (Grades 6-12)— Speech Communications English Language Arts, Composite* All-Level—Speech and Drama (09) All-Level (Grades 1-12)—Speech Communications/Theatre Arts Grades 6-12 or Grades 9-12— Speech Communications English Language Arts, Composite*

*Includes at least six semester hours in speech.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Journalism Advanced Journalism: Yearbook I-III Literary Magazine Newspaper Production I-III Photojournalism Advanced Broadcast Journalism I-III Independent Study in Journalism	Junior High School (grades 9-10 only) or High School— Journalism (23) English Language Arts, Composite (26)* Secondary (Grades 6-12)— Journalism English Language Arts, Composite* Grades 6-12 or Grades 9-12— Journalism English Language Arts, Composite*
*Includes at least six semester hours in journalism.	
LANGUAGES OTHER THAN ENGLISH	
Languages Other Than English	Teaching field in language of assignment Special Subject (appropriate language)
Exploratory Languages	Teaching field in any language Special Subject (any language)
Cultural and Linguistic Topics	Teaching field in any language Special Subject (any language)
American Sign Language	American Sign Language

NOTE: Effective with the 1998-99 school year, individuals must hold the American Sign Language (ASL) Certificate. Individuals assigned prior to the 1998-99 school year based on previous criteria, must pass the TASC-ASL by the 1998-99 school year to become certified in ASL and remain in the assignment.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
MATHEMATICS	Junior High School (grades 9-10 only) or High School— Mathematics (10) Mathematical Science, Composite Secondary (Grades 6-12)—Mathematics Grades 6-12 or Grades 9-12—Mathematics
NOTE: A teacher holding an elementary certificate (grades 1-8) with an area of specialization in mathematics may teach Algebra I at the middle school level for high school graduation credit.	
SCIENCE Biology	Junior High School (grades 9-10 only) or High School— Biology (01) Science, Composite (04) Science Secondary (Grades 6-12)— Biology Science, Composite Science Grades 6-12 or Grades 9-12— Biology Science, Composite Science

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Chemistry	Junior High School (grades 9-10 only) or High School— Chemistry (02) Science, Composite (04) Science Secondary (Grades 6-12)— Chemistry Science, Composite Science Grades 6-12 or Grades 9-12— Chemistry Science, Composite Science
Physics	Junior High School (grades 9-10 only) or High School— Physics (03) Science, Composite (04) Science Secondary (Grades 6-12) Physics Science, Composite Science Grades 6-12 or Grades 9-12— Physics Science, Composite Science

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GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Integrated Physics and Chemistry	Junior High School (grades 9-10 only) or High School— Physical Science (06) Chemistry (02) if issued prior to 9-1-76 Physics (03) if issued prior to 9-1-76 Science, Composite (04) Science Secondary (Grades 6-12)— Physical Science Science, Composite Science Grades 6-12 or Grades 9-12— Physical Science Science, Composite Science Secondary or All-Level Teacher certificate dated between 9-1-66 and 9-1-76 plus 24 semester hours in a combination of sciences completed prior to 9-1-76

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Principles of Technology I, II	Junior High School (grades 9-10 only) or High School— Physics (03) Science, Composite (04) Industrial Arts (60) Secondary (Grades 6-12)— Physics Science, Composite Science Industrial Arts Industrial Technology Special Subject Industrial Arts Grades 6-12 or Grades 9-12— Physics Science, Composite Science Industrial Arts Industrial Technology

May also be taught with a vocational agriculture certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-99 school year. Six semester hours of college physics, chemistry, or electricity/electronics may be substituted for the business and industry experience.

NOTE: All teachers assigned to principles of technology shall participate in a Texas Education Agency approved workshop for beginning principles of technology teachers prior to teaching the course. Technology education teachers must complete six semester hours of college physics prior to assignment.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Geology Meteorology Oceanography Astronomy* Aquatic Science**	Junior High School (grades 9-10 only) or High School— Earth Science (05) Science, Composite (04) Science Secondary (Grades 6-12)— Earth Science Science, Composite Science Grades 6-12 or Grades 9-12— Earth Science Science, Composite Science *Secondary or All-Level teacher certificate plus 24 semester hours in earth science including at least 12 hours in astronomy if assigned prior to the 1989-90 school year. **Secondary or All-Level teacher certificate plus 24 semester hours in biology including 12 hours in marine/aquatic science if assigned prior to the1989-90 school year.

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Environmental Systems AP Environmental Science IB Environmental Systems	Junior High School (grades 9-10 only) or High School— Science, Composite (04) Science Secondary (Grades 6-12) Science, Composite Science Grades 6-12 or Grades 9-12 Science, Composite Science Secondary or All-Level teacher certificate plus 24 semester hours in science including at least 12 hours in environmental science and/or ecology if assigned prior to the 1989-90 school year Any science teaching field with 12 semester hours in environmental science and/or ecology

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Anatomy and Physiology of Human Systems Medical Microbiology Pathophysiology	Junior High School (grades 9-10 only) or High School— Biology (01) Science, Composite (04) Science Secondary (Grades 6-12)— Biology Science, Composite Science Grades 6-12 or Grades 9-12— Biology Science, Composite Science Vocational Health Occupations (68) Vocational Health Occupations/Cooperative Training Vocational Health Occupations/Pre-employment Lab Vocational Handicapped Health Health Science Technology
Scientific Research and Design	Any secondary science teaching field Vocational Health Occupations (68) Vocational Health Occupations/Cooperative Training Vocational Health Occupations/Pre-employment Lab Vocational Handicapped Health Health Science Technology

NOTE: Professional development opportunities will be provided for both the science-certified teachers and the health science technology certified teachers.

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
HEALTH	Junior High School (Grades 9-10 only) or High School— Health (81) Health and Physical Education (80) Secondary (Grades 9-12)—Health All-Level—Health and Physical Education (07) Grades 6-12 or Grades 9-12—Health
PHYSICAL EDUCATION	Junior High School (grades 9-10 only) or High School— Physical Education (82) Health and Physical Education (80) Secondary (Grades 6-12)—Physical Education All-Level—Physical Education All-Level—Health and Physical Education (07) All-Level (Grades PK -12)—Physical Education Special Subject Physical Education Grades 6-12 or Grades 9-12—Physical Education

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
FINE ARTS	
Art	Junior High School (grades 9-10 only) or High School—Art (50) Secondary (Grades 6-12)—Art All-Level—Art (06) All-Level (Grades PK -12)—Art Special Subject Area Grades 6-12 or Grades 9-12—Art
Theatre	Junior High School (grades 9-10 only) or High School— Drama (25) Speech and Drama Secondary (Grades 6-12)—Theatre Arts All-Level—Speech/Drama (09) All-Level (Grades PK -12)—Speech Communications/Theatre Arts All-Level (Grades PK – 12) Theatre Arts Grades 6-12 or Grades 9-12—Theatre Arts

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Music	Junior High School (grades 9-10 only) or High School—Music (90) Secondary (Grades 6-12)—Music All-Level—Music (08) All-Level (Grades PK-12)—Music Special Subject Music Grades 6-12 or Grades 9-12-Music
Dance (Fine Arts Credit)	Junior High School (grades 9-10 only) or High School—Dance Secondary (Grades 6-12)—Dance Grades 6-12 or Grades 9-12—Dance

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GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
SOCIAL STUDIES	
History	Junior High School (grades 9-10 only) or High School— History (34) Social Science, Composite (36) Secondary (Grades 6-12)— History Social Studies Social Studies, Composite Grades 6-12 or Grades 9-12— History Social Studies Social Studies, Composite
Geography	Junior High School (grades 9-10 only) or High School— Geography (32) Social Science, Composite (36) Secondary (Grades 6-12)— Geography Social Studies Social Studies, Composite Grades 6-12 or Grades 9-12— Geography Social Studies Social Studies, Composite

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Government	Junior High School (grades 9-10 only) or High School— Government-Political Science (33) Social Science, Composite (36) Secondary (Grades 6-12)— Government Social Studies Social Studies, Composite Grades 6-12 or Grades 9-12— Government Social Studies Social Studies, Composite

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Psychology	Junior High School (grades 9-10 only) or High School— Psychology (35) Social Science, Composite (36) Secondary (Grades 6-12)— Psychology Social Studies Social Studies, Composite Grades 6-12 or Grades 9-12 Psychology Social Studies Social Studies, Composite
Sociology	Junior High School (grades 9-10 only) or High School--- Sociology (37) Social Science, Composite (36) Secondary (Grades 6-12)— Sociology Social Studies Social Studies, Composite Grades 6-12 or Grades 9-12 Sociology Social Studies Social Studies, Composite

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Social Studies Advanced Studies Special Topics in Social Studies Social Studies Research Methods	Junior High School (grades 9-10 only) or High School— Anthropology (38) Economics (31) Geography (32) Government-Political Science (33) History (34) Psychology (35) Sociology (37) Social Science, Composite (36) Secondary (Grades 6-12)— Economics Geography Government History Psychology Sociology Social Studies Social Studies, Composite Grades 6-12 or Grades 9-12— Economics Geography Government History Psychology Sociology Social Studies Social Studies, Composite

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Economics with Emphasis on the Free Enterprise System and Its Benefits	Junior High School (grades 9-10 only) or High School— Economics (31) Social Science, Composite (36) Secretarial Business (72) Business Administration (71) Business, General, Composite (70) Basic Business (No Shorthand) (73) Secondary (Grades 6-12)— Economics Social Studies Social Studies, Composite Secretarial Business Business Administration Business, General, Composite Basic Business (No Shorthand) Special Subject Commercial Subjects Grades 6-12 or Grades 9-12— Economics Social Studies Social Studies, Composite Secretarial Business Business Administration Business, General, Composite Basic Business (No Shorthand)

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
DRIVER EDUCATION	Driver Education (32)
TECHNOLOGY APPLICATIONS Computer Science I, II	Junior High School (grades 9-10 only) or High School— Computer Information Systems (11) Secondary (Grades 6-12)—Computer Information Systems Grades 6-12 or Grades 9-12—Computer Information Systems
Desktop Publishing Digital Graphics/Animation Multimedia Video Technology Web Mastering Independent Study in Technology Applications	Secondary teacher certificate plus must demonstrate sufficient technology competencies to address the needs of the course(s)

NOTES:
1. The district is responsible for seeing that teachers have the appropriate technology applications knowledge and skills, as defined in the SBEC-approved Educator Standards for Technology Applications, to teach the course(s) to which they are assigned.
2. Individuals assigned to teach one or more of the six technology applications courses prior to the 2003-2004 school year based on meeting the above criteria shall remain eligible to teach the courses to which they have been previously assigned. The employing school district is responsible for ensuring that these technology applications teachers stay current through annual continuing education and professional development tied directly to the specific Technology Applications TEKS in 19 TAC Chapter 126 for the course(s) taught. The school district must maintain documentation of this continuing education and professional development in the personnel files of the teachers.
3. Initial assignments to teach the six technology applications courses beginning with the 2003-2004 school year require the Technology Applications Certificate.

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
ROTC	Emergency Permit for first year of assignment. Continuation in the assignment will appear on the teacher service record
ATHLETICS, CHEERLEADING, DRILL TEAM For Physical Education Equivalent Credit	Teacher certificate appropriate for grade level of assignment
DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS (See In-School Suspension)	Teacher certificate appropriate for grade level of assignment
IN-SCHOOL SUSPENSION CLASS (for students assigned less than six weeks)	Educational Aide III under daily supervision of a teacher certified at the grade level of assignment
IN-SCHOOL SUSPENSION CLASS (for students assigned more than six weeks)	Teacher certificate appropriate for grade level of assignment
MAGNET COURSE INNOVATIVE COURSE	Teacher certificate appropriate for grade level of assignment or TEA approval
LOCAL CREDIT COURSE	Teacher certificate appropriate for grade level of assignment or appropriate qualifications as determined by the district
ADVANCED PLACEMENT COURSE INTERNATIONAL BACCALAUREATE COURSE	Teacher certificate appropriate for the area and grade level of assignment unless otherwise specified in this subsection

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
AGRICULTURAL SCIENCE AND TECHNOLOGY	
Comprehensive, Exploratory, and Technical Courses:	Vocational Agriculture Production Vocational Agriculture (63)
Introduction to World Agricultural Science and Technology	
Applied Agricultural Science and Technology	
Introduction to Agricultural Mechanics	
Home Maintenance and Improvement	
Plant and Animal Production	
Food Technology	
Introduction to Horticultural Sciences*	
Energy and Environmental Technology	
Agribusiness Management and Marketing	
Personal Skill Development in Agriculture	
Entrepreneurship in Agriculture	
Agricultural Structures Technology	
Agricultural Metal Fabrication Technology	

*May be taught with Vocational Agricultural Ornamental Horticulture certificate.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Agricultural power technology Specialty agriculture Animal science Plant and soil science Equine science Landscape design, construction, and maintenance* Horticulture plant production* Floral design and interior landscape management Fruit, nut, and vegetable production* Wildlife and recreation management Advanced animal science Advanced plant and soil science Advanced agribusiness management and marketing Exploring Aquaculture Computer applications in agriculture Environmental Technology Range management and ecology Forestry and wood technology Advanced floral design Agricultural communications Agricultural electronics Applied entomology Agricultural biotechnology Agricultural science and technology Independent study	Vocational Agriculture Production Vocational Agriculture (63)

* May be taught with Vocational Agriculture Ornamental Horticulture certificate.

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Work-based Learning Courses	
	Vocational Agriculture Cooperative Training Vocational Agriculture (63)* Vocational Agriculture Production*
Agricultural Industry	
Agricultural Mechanics	Vocational General Agriculture Mechanics Vocational Agriculture (63)** Vocational Agriculture Production**
Horticulture	Vocational Agriculture Ornamental Horticulture Vocational Agriculture (63)** Vocational Agriculture Production**
Meat Processing	Vocational Agriculture Meat Processing Vocational Agriculture (63)** Vocational Agriculture Production**

* Plus TEA cooperative workshop of three semester hours in the area of the special agricultural science and technology program.
** Plus TEA pre-employment workshop or six semester hours in the area of the special agricultural science and technology program.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Aquaculture Production	Vocational Agriculture Production* Vocational Agriculture (63)*
(Agricultural Resources)	Vocational Agriculture Resources Vocational Agriculture (63)** Vocational Agriculture Production**
(Animal Production)	Vocational Agriculture Feedlot Employment Vocational Agriculture (63)** Vocational Agriculture Production**

* Plus TEA agricultural industry (or pre-employment laboratory) workshop in aquaculture.

** Plus TEA pre-employment workshop or six semester hours in the area of the special agricultural science and technology.

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Agricultural Power & Machinery I	Vocational Agricultural Power Machinery Vocational Agricultural (63)* Vocational Agricultural Production*

*Plus TEA pre-employment workshop or six semester hours in the area of the special agricultural science and technology

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
HEALTH SCIENCE TECHNOLOGY Introduction to Health Science Technology Health Science Technology I, II, III Medical Terminology Gerontology Clinical Nutrition Pharmacology Mental Health Health Science Technology Independent Study	Vocational Health Occupations (68) Vocational Health Occupations/Cooperative Training Vocational Health Occupations/Pre-employment Lab Vocational Handicapped Health Health Science Technology
Anatomy and Physiology of Human Systems Medical Microbiology Pathophysiology	Vocational Health Occupations (68) Vocational Health Occupations/Cooperative Training Vocational Health Occupations/Pre-employment Lab Vocational Handicapped Health Health Science Technology Junior High School (grades 9-10 only) or High School – Biology (01) Science, Composite (04) Science Secondary (Grades 6-12) – Biology Science, Composite Science Grades 6-12 or Grades 9-12 – Biology Science, Composite Science

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Scientific Research and Design	Vocational Health Occupations (68) Vocational Health Occupations/Cooperative Training Vocational Health Occupations/Pre-employment Lab Vocational Handicapped Health Health Science Technology Any secondary science teaching field

Note: Professional development opportunities will be provided for both the science certified teachers and the health science technology certified teachers.

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GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
HOME ECONOMICS	
Home Economics Comprehensive, Technical, and Cluster Courses	Vocational Homemaking (64) Vocational Home Economics
Personal and Family Development Family and Career Management Individual and Family Life Family Health Needs Preparation for Parenting Child Development Management Consumer and Family Economics Nutrition and Food Science Food Science and Technology Apparel Textiles and Apparel Design Housing Interior Design Career Studies Independent Study in Home Economics Education Home Economics Summer Program	Vocational Home Economics Education

NOTE: With the approval of the ARD committee and the IEP for the student, any course in the Home Economics Education Curriculum may be offered as Career and Technology Education for Students with Disabilities (CTED), formerly VEH.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Occupationally Specific Home Economics Courses Child Care and Guidance, Management, and Services Food Production, Management, and Services Services for Older Adults Textile and Apparel Production, Management, and Services Housing, Furnishings, and Equipment, Production, Management and Services Institutional Maintenance Management and Services Home Economics Production, Management and Services	Vocational Homemaking, VEH* Vocational Handicapped Homemaking* Vocational Home Economics Pre-employment Laboratory (92)** Vocational Homemaking (64)*** Vocational Home Economics *** Vocational Home Economics Education Vocational Home Economics Pre-employment Education*

* Restricted to specialized content assignment consistent with background and experience.

** This certificate requires letter verifying approval for specialized content assignment.

*** Plus one of the following: One TEA workshop preparatory for Home Economics Cooperative Education; two TEA workshops preparatory for Home Economics Vocational Education for the Handicapped and/or Coordinated Vocational-Academic Education; fully certifies assignment to the specialized area of instruction in Home Economics Pre-employment Laboratory prior to September 1, 1985; or six semester hours of occupational home economics course work from an approved institution; or any two of the following three criteria: two years of approved wage earning experience in the specialized area of instruction, three semesters hours of occupational home economics course work from an approved institution, or one TEA workshop preparatory for Home Economics Vocational Education for the Handicapped or Coordinated Vocational-Academic Education.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
TECHNOLOGY EDUCATION (Previously Industrial Technology Education) (Previously Industrial Arts) Communication systems Communication graphics Manufacturing systems Construction systems Technology systems Computer applications Engineering principles Energy, power and transportation systems Bio-related technology systems Architectural graphics Engineering graphics Manufacturing technology Architectural construction Electricity/electronics technology Computer multimedia and animation technology Research design and development Problems and solutions in technology	Junior High School (grades 9-10 only) or High School – Industrial Arts (60) Special Subject Industrial Arts Secondary (Grades 6-12) – Industrial Arts Industrial Technology Grades 6-12 or Grades 9-12 Industrial Arts

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Principals of Technology I, II*	Junior High School (grades 9-10 only) or High School – Industrial Arts (60) Physics (03) Science, Composite (04) Special Subject Industrial Arts Secondary (Grades 6-12) – Industrial Arts Industrial Technology Physics Science, Composite Science Grades 6-12 or Grades 9-12 Industrial Arts Industrial Technology Physics Science, Composite Science

*May also be taught with a vocational agricultural certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-99 school year. Six semester hours of college physics, chemistry or electricity/electronics may be substituted for the business and industry experience.

NOTE: All teachers assigned to principles of technology shall participate in a Texas Education Agency approved workshop for beginning principles of technology teachers prior to teaching the course. Technology education teachers must complete six semester hours of college physics prior to assignment.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
MARKETING EDUCATION	Vocational Distributive Education (65)
Retailing	Vocational Marketing Education
Principles of marketing	
Marketing Dynamics	
Marketing Management	
Entrepreneurship	
Marketing Yourself	
Advertising	
International Marketing	
Professional Selling	
Technology in Marketing	
Fashion Marketing*	
Food Marketing*	
Hotel Management*	
Restaurant Management*	
Services Marketing*	
Travel and Tourism Marketing*	
Marketing Education Independent Study	

*The district must assume responsibility for seeing that the teacher(s) have the occupational experience and training in the specialized field.

NOTE: With the approval of the ARD committee and the IEP for the Student, any course in the Marketing Education curriculum may be offered as Careet and Technology Education for Students with Disabilities (CTED) formerly VEH.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
CAREER ORIENTATION	
Career Connections	Vocational Occupational Orientation (91) Junior High School or High School – Secretarial, Business (72) Basic Business (No Shorthand) (73) Business, General, Composite (70) Business Administration (71) Secondary (Grades 6-12) Secretarial, Business Basic Business (No Shorthand) Business, General, Composite Business Administration Special Subject Commercial Subjects Grades 6-12 or Grades 6-8 – Secretarial, Business Basic Business Business, General , Composite Business Administration

May be taught by any degreed Career and Technology Education certified teacher with verified two years of work experience other than teaching experience.

NOTE: Participation in a Texas Education Agency approved workshop for beginning career orientation teachers is required prior to teaching the course.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
BUSINESS EDUCATION Accounting I Accounting II + Administrative Procedures + Banking and Financial Systems Business Communications Business Computer Information Systems I (formerly Microcomputer Applications) Business Computer Information Systems II + Business Computer Programming + Business Education Independent Study Business Law	Junior High School (grades 9-10 only) or High School – Business, General, Composite (70) + Business Administration (71) ** + Secretarial Business (72) * + Basic Business (No Shorthand) (73) + Secondary (Grades 6-12) – Business, General, Composite + Business Administration ** + Secretarial Business * + Basic Business (No Shorthand) + Special Subject Commercial Subjects Grades 6-12 or Grades 9-12 Business, General, Composite + Business Administration ** + Secretarial Business * + Basic Business (No Shorthand) + Vocational Office Education (98) ** # ♦ Vocational Office Education Cooperative and Pre-Lab ** # ♦ Vocational Office Education Pre-Lab ** # ♦ Office Education ** # ♦

* Cannot teach Banking and Financial Systems, Business Law, Business Management, or Business Ownership.

** Requires evidence of three semester hours of college level credits in keyboarding/typing if teaching Keyboarding, Word Processing Applications, Business Computer Information Systems I and II, Computer Programming, Administrative Procedures, Business Image Management and Multimedia, or Telecommunications and Networking. Certified personnel who have a related business degree rather than a Business Education degree must show evidence of three semester hours of college-level credit in keyboarding/typing.

\+ Business Education certified personnel shall complete six semester hours in management of work-based learning instructional arrangements and shall have two years of related work experience in order to teach the Business Education career preparation classes.

\# Requires evidence of three semester hours of college-level credit in accounting for personnel assigned to teach accounting.

♦ Requires three semester hours of college-level credit in economics if the Office Education certified personnel has a related business degree rather than a Business Education degree.

NOTES:

1. All Business Education certified personnel who have not previously attended at least one Business Education professional development conference shall attend to ensure the teacher is prepared to teach all courses within the Business Education content area.
2. The LEA shall determine computer competency for teachers certified prior to the inclusion of computing instruction in teacher education programs. Computing Competency may be obtained in any one or combination of vendor-provided training, professional development conferences (hands-on classes), ESC workshops/courses, higher education courses, or private schools, etc.
3. The assignment of non-degreed CVAE, VEH, certified teachers is limited to the laboratory courses of Business Computer Information Systems I and Business Office Services.
4. With the approval of the ARD committee and the IEP for the student, any course in the Business Education curriculum may be offered as Career and Technology Education for Students with Disabilities (CTED) formerly VEH.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
BUSINESS EDUCATION (continued) Business Management Business Ownership Business Image Management and Multimedia Business Support Systems Economics with Emphasis on the Free Enterprise System and Its Benefits International Business + Introduction to Business Keyboarding Recordkeeping Telecommunications and Networking Word Processing Applications	Junior High School (grades 9-10 only) or High School – Business, General, Composite (70) + Business Administration (71) ** + Secretarial Business (72) * + Basic Business (No Shorthand) (73) + Secondary (Grades 6-12) – Business, General, Composite + Business Administration ** + Secretarial Business * + Basic Business (No Shorthand) + Special Subject Commercial Subjects Grades 6-12 or Grades 9-12 Business, General, Composite + Business Administration ** + Secretarial Business * + Basic Business (No Shorthand) + Vocational Office Education (98) ** # ♦ Vocational Office Education Cooperative and Pre-Lab ** # ♦ Vocational Office Education Pre-Lab ** # ♦ Office Education ** # ♦

* Cannot teach Banking and Financial Systems, Business Law, Business Management, or Business Ownership.

** Requires evidence of three semester hours of college level credits in keyboarding/typing if teaching Keyboarding, Word Processing Applications, Business Computer Information Systems I and II, Computer Programming, Administrative Procedures, Business Image Management and Multimedia, or Telecommunications and Networking. Certified personnel who have a related business degree rather than a Business Education degree must show evidence of three semester hours of college-level credit in keyboarding/typing.

\+ Business Education certified personnel shall complete six semester hours in management of work-based learning instructional arrangements and shall have two years of related work experience in order to teach the Business Education career preparation classes.

\# Requires evidence of three semester hours of college-level credit in accounting for personnel assigned to teach accounting.

♦ Requires three semester hours of college-level credit in economics if the Office Education certified personnel has a related business degree rather than a Business Education degree.

NOTES:

1. All Business Education certified personnel who have not previously attended at least one Business Education professional development conference shall attend to ensure the teacher is prepared to teach all courses within the Business Education content area.
2. The LEA shall determine computer competency for teachers certified prior to the inclusion of computing instruction in teacher education programs. Computing Competency may be obtained in any one or combination of vendor-provided training, professional development conferences (hands-on classes), ESC workshops/courses, higher education courses, or private schools, etc.
3. The assignment of non-degreed CVAE, VEH, certified teachers is limited to the laboratory courses of Business Computer Information Systems I and Business Office Services.
4. With the approval of the ARD committee and the IEP for the student, any course in the Business Education curriculum may be offered as Career and Technology Education for Students with Disabilities (CTED) formerly VEH.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
TRADES AND INDUSTRIAL EDUCATION	Vocational Trades and Industries (62) Vocational Trades and Industries Pre-employment Laboratory **Certificates listed above require approved Statement of Qualifications for any of the following:**
Communication and Media Systems	
Advertising Design	Advertising Design
Architectural Drafting	Architectural Drafting
Architectural Interior Design	Architectural Interior Design
Commercial Photography	Commercial Photography

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Computer-Aided Drafting	Computer-Aided Drafting
Graphic Communications Technology	Graphic Communications Technology
Mechanical Drafting	Mechanical Drafting

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Media Technology	Media Technology
Construction and Maintenance Systems	
Building Carpentry	Building Carpentry
Building Electrical Trades	Electrical Trades
Electrical Trades	

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Building Maintenance	Building Maintenance
Concrete Laying & Finishing	Concrete Laying & Finishing
Heating, Ventilation, Air Conditioning & Refrigeration	Heating, Ventilation, Air Conditioning & Refrigeration

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Masonry Services	Masonry Services
Mill & Cabinetmaking	Mill & Cabinetmaking
Painting & Decorating	Painting & Decorating

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12	
ASSIGNMENTS	**JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)**
Piping Trades & Plumbing	Piping Trades & Plumbing
Electrical and Electronic Systems	
Business Machine Repair	Business Machine Repair
Computer Technologies	Computer Technologies
AC/DC Electronics/Computer Systems	

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Electronics	Electronics
Instrumentation	Instrumentation
Major Appliance Service Technology	Major Appliance Service Technology

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Telecommunication Services	Telecommunication Services
Industrial and Manufacturing Systems	
Ceramics Manufacturing	Ceramic Manufacturing
Foundry Operations	Foundry Operations

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Hydraulics & Pneumatics	Hydraulics & Pneumatics
Petro-Chemical Processing	Petro-Chemical Processing
Plant Maintenance	Plant Maintenance
Plant Processes	Plant Processes
Plastics Technology	Plastics Technology

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.
Trades and Industrial Courses (Continued)

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Power Technology	Power Technology
Quality Control	Quality Control

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Metal Technology Systems	
Machine Shop	Machine Shop
Metal Trades	Metal Trades
Sheetmetal	Sheetmetal
Welding	Welding

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Personal and Protective Services Systems	
Cosmetology	Cosmetology
Furniture Repair & Upholstering	Furniture Repair & Upholstery
Leather Trades Services	Leather Trades Services
Needle Trades Services	Needle Trades Services

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Protective Services	Protective Services
Transportation Systems	
Aircraft Services	Aircraft Services
Automotive Services	Automotive Services
Collision Repair & Refinishing Services	Collision Repair & Refinishing Service

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Diesel Services	Diesel Services
Marine Services	Marine Services
Small Engine Services	Small Engine Services

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Introduction to Construction Careers	Air conditioning and refrigeration Bricklaying/stone masonry Building maintenance Building trades Construction carpentry Concrete laying and finishing Electrical trades Mill and cabinetmaking Painting and decorating Piping trades/plumbing Vocational Occupational Orientation (91) Certificate listed above requires letter of approval for: Occupational Exploration Construction Cluster Vocational Handicapped (67) Vocational Industrial, Pre-employment/handicapped Vocational Handicapped Industrial

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Introduction to Electrical/Electronic Careers	Vocational Industrial Electronics Vocational Trades and Industries (62) Vocational Trades and Industries Pre-employment Laboratory Vocational Technical (96) Certificates listed above require Approved Statement of Qualifications for any of the following: Business machine repair Computer maintenance technician Electronics Instrumentation Major appliances services technology Telecommunication technology Vocational Handicapped (67) Vocational Industrial Pre-employment/handicapped Vocational Handicapped Industrial

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Introduction to Precision Metal Manufacturing Careers	Vocational Trades and Industries (62) Vocational Trades and Industries Pre-employment Laboratory **Certificates listed above require approved Statement of Qualifications for any of the following:** Machine shop Metal trades Sheetmetal Welding Quality control Vocational Occupational Orientation (91) Certificate listed above requires letter of approval for: Occupational Exploration Manufacturing Cluster Vocational Handicapped (67) Vocational Industrial, Pre-employment/handicapped Vocational Handicapped Industrial

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Introduction to Graphic Communications Careers	Vocational Trades and Industries (62) Vocational Trades and Industries, Pre-employment Laboratory **Certificates listed above require approved Statement of Qualifications for any of the following:** Advertising design Commercial photography Drafting Architectural drafting Graphics communications technology Media technology Printing, offset Printing, letterpress Printing trades Vocational Occupational Orientation (91) **Certificate listed above requires letter of approval for:** Occupational Exploration Communications and Media Cluster

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.

In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.

Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Introduction to Transportation Service Careers	Vocational Trades and Industries (62) Vocational Trades and Industries Pre-employment Laboratory **Certificates listed above require approved Statement of Qualifications for any of the following:** Aircraft mechanics Automotive collision, repair and refinishing technology Auto specialization Auto mechanics Automotive technician Diesel mechanics Marine engine repair Small engine repair Vocational Occupational Orientation (91) **Certificate listed above requires letter of approval for:** Occupational Exploration Transportation Cluster Vocational Handicapped (67) Vocational Industrial, Pre-employment, Handicapped Vocational Handicapped Industrial

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.

In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.

Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Introduction to Visual Communications Processes	Vocational Trades and Industries (62) Vocational Trades and Industries Pre-employment Laboratory **Certificates listed above require approved Statement of Qualifications for any of the following:** Advertising design Architectural drafting Architectural interior design Commercial photography Computer-aided drafting Mechanical drafting Graphic communications technology Media technology
Introduction to Advertising Design	Advertising design
Technical Introduction to Desktop Publishing	Advertising design Computer-aided drafting Graphic communications technology Media technology

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

GRADES 9-12

ASSIGNMENTS	JUNIOR HIGH SCHOOL, HIGH SCHOOL OR ALL-LEVEL CERTIFICATE (NUMERICAL CODES)
Trades and Industrial Courses (Continued)	
Introduction to Media Technology	Advertising design Commercial photography Graphic communications technology Media technology
Introduction to Computer Maintenance	Computer technologies
Introduction to Engineering Systems	Ceramics manufacturing Foundry operations Hydraulics and pneumatics Petro-chemical processing Plant maintenance Plant processes Plastics technology Power technology Quality control

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

Trades and Industrial Courses (Continued)

Introduction to Cosmetology	Cosmetology
Introduction to Upholstery/Furniture Repair	Upholstery/ furniture repair
Introduction to Security Services	Protective services

NOTES:

With ARD committee approval, any course in the Trades and Industrial Education section may be offered as a Career and Technology Education course for Students with Disabilities (CTED) formerly VEH.
In the interim period while new educator preparation standards are established, the LEA may determine the teaching assignment of non-degreed CVAE and VEH teachers.
Any course in Trade and Industrial Education may be taught as a Career Preparation (Cooperative Education) instructional arrangement.

Figure: 19 TAC §230.601(f)

ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

PART II

REQUIREMENTS FOR TEACHERS CERTIFIED BEFORE 1966
AND ASSIGNED TO GRADES 6-12

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 6-8 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
BUSINESS		
Typewriting (keyboarding)	A college course in typewriting if teaching one or two classes	A college course in typewriting or specific preparation in secretarial science
Career Investigation	12 semester hours in business education	18 semester hours in business
ENGLISH LANGUAGE ARTS		
English Language Arts	18 semester hours in English	18 semester hours in English
Speech	12 semester hours in speech	12 semester hours in speech
Reading	Specific preparation in the teaching of reading*	Specific preparation in the teaching of reading*
Reading Improvement	Specific preparation in the teaching of reading*	Specific preparation in the teaching of reading*
FINE ARTS		
Art	12 semester hours in art	18 semester hours in art
Theatre Arts	12 semester hours in theatre arts	18 semester hours in theatre arts
Music	12 semester hours in music	18 semester hours in music

*Such as inservice, seminar, or college course in reading

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 6-8 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
HEALTH	12 semester hours in health	12 semester hours in health, biology, foods, nutrition, or physiology
MATHEMATICS	12 semester hours in mathematics	18 semester hours in mathematics
PHYSICAL EDUCATION	12 semester hours in physical education	12 semester hours in physical education
SCIENCE		
Life Science	12 semester hours in science	18 semester hours in science (any combination of sciences)
Earth Science	12 semester hours in science	18 semester hours in science (any combination of sciences)
OTHER LANGUAGES	12 semester hours in the language of assignment	18 semester hours in the language of assignment
SOCIAL STUDIES	18 semester hours in social studies	18 semester hours in social studies including 12 semester hours related to the assignment
TECHNOLOGY APPLICATIONS	Verified competency in accordance with procedures established by the State Board for Educator Certification	Verified competency in accordance with procedures established by the State Board for Educator Certification

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 6-8 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
BUSINESS EDUCATION		
Introduction to Keyboarding	One course in advanced typewriting/keyboarding	A college course in advanced typewriting/keyboarding if teaching one or two classes, or specific preparation in secretarial science

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 9-12 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
Advanced Accounting	12 semester hours in business education, including a course in bookkeeping or accounting	24 semester hours in business education
Recordkeeping	12 semester hours in business education, including a course in bookkeeping or accounting	24 semester hours in business education

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 9-12 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
ENGLISH LANGUAGE ARTS English I-IV Correlated Language Arts Research/Technical Writing Creative/Imaginative Writing Practical Writing Skills World Literature Literary Genres Humanities Analysis of Visual Media Independent Study in English	18 semester hours in English	24 semester hours in English
Introduction to Speech Communication Oral Interpretation I-III Introduction to Radio and Television Debate I-III Public Speaking I-III Independent Study in Speech	18 semester hours in English including 6 semester hours in speech	12 semester hours in speech if teaching only one or two classes; 24 semester hours in speech if teaching three or more classes
Journalism	18 semester hours in English including 6 semester hours in journalism	12 semester hours in journalism if teaching only one or two classes; 24 semester hours in journalism if teaching three or more classes

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 9-12 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
Reading Improvement	Specific preparation in the teaching of reading*	Specific preparation in the teaching of reading*
*Such as inservice, seminar, or college course in reading		
Advanced Reading	Specific preparation in the teaching of reading*	Specific preparation in the teaching of reading*
*Such as inservice, seminar, or college course in reading		
FINE ARTS		
Art	12 semester hours in art	24 semester hours in art
Theatre	18 semester hours in English including 6 semester hours in theatre arts	12 semester hours in theatre arts if teaching only one or two classes; 24 semester hours in theatre arts if teaching three or more classes
All Music Courses except for Applied Music	12 semester hours in music	24 semester hours in music
HEALTH		
	12 semester hours in health or related subjects such as nutrition, anatomy, physiology, kinesiology, other life sciences related to human health, social sciences related to mental or social health, home and family living, and first aid	18 semester hours in health or related subjects such as nutrition, anatomy, physiology, kinesiology, other life sciences related to human health, social sciences related to mental or social health, home and family living, and first aid

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 9-12 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
PHYSICAL EDUCATION	12 semester hours in physical education	24 semester hours in physical education
INDUSTRIAL TECHNOLOGY	12 semester hours in industrial arts	24 semester hours in industrial arts
MATHEMATICS (ALL COURSES)	12 semester hours in mathematics	24 semester hours in mathematics
SCIENCE		
Biology I, II	12 semester hours in science with at least one course in biology	24 semester hours in biology
Chemistry I, II	12 semester hours in science with at least one course in chemistry	24 semester hours in chemistry
Physics I, II	12 semester hours in science with at least one course in physics	24 semester hours in physics

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 9-12 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
Physical Science	12 semester hours in science	24 semester hours in any combination of sciences
Physiology and Anatomy	12 semester hours in science	24 semester hours in science
Geology	12 semester hours in science with at least one course in geology	24 semester hours in science including at least 12 semester hours in geology
Meteorology	12 semester hours in science with at least one course in meteorology	24 semester hours in science including at least 12 semester hours in meteorology
Astronomy	12 semester hours in science with at least one course in astronomy	24 semester hours in science including at least 12 semester hours in astronomy
Marine Science	12 semester hours in science with at least one course in oceanography	24 semester hours in science including at least 12 semester hours in oceanography
Environmental Science	12 semester hours in science including at least one course in environmental science and/or ecology	24 semester hours in science including at least 12 semester hours in environmental science and/or ecology
OTHER LANGUAGES (ALL COURSES)	12 semester hours in the language of assignment	24 semester hours in the language of assignment

PROVISIONS FOR TEACHERS CERTIFIED BEFORE 1966 AND ASSIGNED TO GRADES 9-12 (DEPARTMENTALIZED)

SUBJECT	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED PRIOR TO SEPTEMBER 1, 1962	MINIMUM REQUIREMENTS FOR THOSE WITH CERTIFICATES DATED AFTER SEPTEMBER 1, 1962, AND PRIOR TO SEPTEMBER 1, 1966
SOCIAL STUDIES		
United States History	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
World History Studies	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
World Geography Studies	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
United States Government	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
Advanced Texas Studies	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
American Culture Studies	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
World Area Studies	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment

Psychology	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
Sociology	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment
Advanced Social Science Problems	18 semester hours in social studies	24 semester hours in social studies including 12 semester hours related to the assignment

NOTE: If no provisions are listed above, assignments must meet requirements in Part I: Requirements for Assignment of Teachers

Figure: 19 TAC §230.601(f)

ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

PART III

REQUIREMENTS FOR ASSIGNMENT OF ADMINISTRATORS,
OTHER INSTRUCTIONAL AND PROFESSIONAL SUPPORT PERSONNEL,
SPECIAL EDUCATION RELATED SERVICES PERSONNEL, AND
PARAPROFESSIONAL PERSONNEL

ADMINISTRATORS AND OTHER INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
Superintendent	Superintendent (26, 27) Administrator (25)
Principal	Superintendent (26, 27) Administrator (25) Mid-Management Administrator (24) Principal (22, 28)
Assistant Principal	Superintendent (26, 27) Administrator (25) Mid-Management Administrator (24) Principal (22, 28) Assistant Principal (23)
Counselor	Counselor (31)
Career and Technology Counselor	Vocational Counselor (70)

ADMINISTRATORS AND OTHER INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
Librarian I	Provisional or Professional Librarian (32) Learning Resources Endorsement Learning Resources Specialist
Librarian II	Professional Librarian (32) Learning Resources Specialist
Athletic Director	Teacher certificate
Special Duty Teacher	Appropriate teaching certificate plus special training for special assignment
Teacher of Gifted and Talented Students	Teacher certification in appropriate area and level of assignment Gifted and Talented Endorsement (not required for assignment)

NOTE: The gifted and talented endorsement is optional and not required for assignment. In order to be eligible for assignment to a gifted and talented program, an individual must hold certification in the appropriate area and level of assignment. In addition to the requirements specified in this subchapter, individuals assigned to a gifted a talented program must comply with the provisions of Chapter 89, Subchapter A of this title (relating to Gifted and Talented Education.)

SPECIAL EDUCATION SUPPORT AND INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
SPECIAL EDUCATION Counseling Services	Special Education Counselor Special Education Visiting Teacher
Educational Diagnostician	Educational Diagnostician (40)

NOTE: Individuals certified or licensed to practice in other professions may be eligible to provide counseling services or evaluation services for students with disabilities under the scope of practice of the specific license held.

SPECIAL EDUCATION SUPPORT AND INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
Special Education Teacher	Deaf and Severely Hard of Hearing (43) Hearing Impaired Deficient Vision (41) Visually Handicapped Emotionally Disturbed (47) Severely Emotionally Disturbed and Autistic Generic Special Education Elementary - Generic Special Education Elementary (Grades 1-8) - Generic Special Education High School - Generic Special Education Secondary (Grades 6-12) - Generic Special Education (grades 6-12 only) Language and/or Learning Disabilities (51) Mentally Retarded (44) Physically Handicapped (42) Severely and Profoundly Handicapped Speech and Hearing Therapy (45) Speech and Language Therapy School Speech-Language Pathologist Deaf School (01) (Texas State School for the Deaf only) Blind School (02) (Texas State School for the Blind only) Deaf-Blind Early Childhood Education for Handicapped Children (52) (infants-Grade 6 only)

These certificates are appropriate for special education assignment in grades PK-12 except where otherwise noted.

NOTE: Teachers whose salaries are paid from special education funds must hold special education certification or endorsement and demonstrate the necessary skills for the particular assignment. In most cases, generic certification is appropriate; however, the district should make every effort to secure educators trained in the specialized skills needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the district will make provisions for the person to acquire the necessary skills and knowledge.

SPECIAL EDUCATION SUPPORT AND INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
Teacher of Adaptive Physical Education	Special education certificate, endorsement, teaching field, area of specialization, or related service credential plus the necessary skills and knowledge* Teacher certificate with an area of specialization or teaching field in Physical Education (82) or Health and Physical Education (80) All-Level - Physical Education All-Level - Health and Physical Education (07) All-Level (Grades 1-12) - Physical Education Special Subject Physical Education Grades 6-8 - Physical Education Grades 9-12 - Physical Education Grades 6-12 - Physical Education

*Evidence of "necessary skills and knowledge" must be documented through inservice records, seminar attendance records, or transcripts of college courses.

NOTE: Other licensed professionals may be eligible to provide adaptive physical education services to students with disabilities under the scope of practice of the specific license held.

SPECIAL EDUCATION SUPPORT AND INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
Teacher of Orthopedically Impaired or Other Health Impaired in a Hospital Class or Home-Based Instruction (Full-time)	Special education certificate or endorsement Teacher certificate plus: Three semester hour survey course in education of the handicapped and Three semester hour course related to teaching physically impaired or other health impaired
Teacher of Visually Impaired	Deficient Vision (41) Visually Handicapped

NOTE: This teacher must be available to visually impaired students.

Teacher of Auditorially Impaired	Deaf and Severely Hard of Hearing (43) Hearing Impaired

NOTE: This teacher must be available to auditorially impaired students. Teachers who hold Hearing Impaired Certificates dated September 1, 1998, or later must have passed the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) before they may be assigned to teach in a classroom in which sign communication is the predominate communication method used. A teacher is not required to pass the TASC or the TASC-ASL in order to be assigned to a classroom in which another communication method is used predominately. If this teacher completes certification requirements through an approved preparation program in Texas, the program must have assessed proficiency in the communication method and verified it to be at an appropriate level.

SPECIAL EDUCATION SUPPORT AND INSTRUCTIONAL PERSONNEL

TITLE	CERTIFICATES (NUMERICAL CODES)/CREDENTIALS
Speech Therapy Services	Speech and Hearing Therapy (45) Speech and Language Therapy School Speech-Language Pathologist

NOTE: Individuals licensed by the State Board of Examiners for Speech Language Pathology and Audiology also may provide speech therapy services to eligible students under the scope of practice of the specific license held.

Vocational Adjustment Coordinator	If initially assigned prior to 9/1/85: Special education certificate Teacher certificate plus special education endorsement If initially assigned after 9/1/85, but before September 1, 1990,: Generic Special Education If initially assigned after September 1, 1990: Special Education Certificate* Teacher certificate plus special education endorsement* Generic Special Education*

*Plus 60 clock hours of specified in-service training resulting in a certificate of completion from the in-service provider.

NOTE: Teachers assigned to this instructional arrangement after September 1, 1990, will have three years from the date of assignment to complete the new criteria.

PARAPROFESSIONAL PERSONNEL

TITLE	RESPONSIBILITIES	CERTIFICATES
EDUCATIONAL AIDE Educational Aide I	Performs routine tasks under the direction and supervision of a certified teacher or other professional personnel.	Educational Aide I, II, III Texas Teacher Certificate
Educational Aide II	Performs tasks under the general supervision of a certified teacher or other professional personnel.	Educational Aide II, III Texas Teacher Certificate
Educational Aide III	Performs and assumes responsibilities for tasks under the general guidance of a certified teacher or other professional personnel. Responsibilities may include relieving teacher of selected exercises and instructional drills with students.	Educational Aide III Texas Teacher Certificate

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.

Office of the Attorney General

Texas Solid Waste Disposal Act and the Texas Water Code Enforcement Settlement Notice

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: City of Conroe, Texas, and the State of Texas, by and through the Texas Natural Resource Conservation Commission, a Necessary and Indispensable Party v. William A. Bergfeld, Jr., and Lawrence Gene Williams; No. 01-04-02244CV97; in the 9th Judicial District, Montgomery County, Texas.

Nature of Suit: This suit concerns disposal of municipal solid waste on approximately 3.5 acres of land located at the end of an unnamed land that extends from Wade Circle in Conroe, Texas. The site at relevant times was owned/ and or operated by Defendants William A. Bergfeld, Jr., and Lawrence Gene Williams as an unpermitted municipal solid waste disposal site.

Proposed Agreed Judgment: The proposed Agreed Final Judgment settles all of the claims in the suit. The Agreed Final Judgment requires Defendants to pay $600.00 in civil penalties and $1,500.00 in attorney's fees. The proposed Agreed Final Judgment further permanently enjoins the Defendants from causing, suffering, allowing, or permitting the storage, processing, removal, or disposal of municipal solid waste at the site without a permit or other authorization as required by law.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, please contact A. G. Younger, Agency Liaison, at 512-463-2110.

TRD-200207571
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: November 20, 2002

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Texas Building and Procurement Commission

Invitation for Bid (IFB) Notice

TBPC Project No. 02-036-323

IFB No. 303-3-10778

Project Name: Cooling Tower Replacement, 1000 Red River Street, Austin, Texas

For the Teacher Retirement System of Texas

Sealed Bids for this project will be received until **3:00 P.M., December 16, 2002, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, TX 78701**. See the IFB for other delivery choices.

Plans and specifications may be obtained from the A/E, O'Connell Robertson and Associates, Inc. 811 Barton Springs Road, Suite 900, Austin, Texas 78759, for a deposit of $100.00, refundable upon return of a complete, unmarked set(s).

A mandatory (must attend and sign in) Pre-Bid Conference will be held at the Teacher Retirement System of Texas, 1000 Red River Street, West Building, Austin, Texas 78701, at 9:00 a.m. November 22, 2002. The TBPC will reject bids submitted by firms that did not attend the mandatory Pre-Bid Conference.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC InternalProcurement, Attn: Deborah Norwood (Fax: 512-463-3360), deborah.norwood@tbpc.state.tx.us or through the Electronic State Business Daily at: **http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=44577**

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via email at deborah.norwood@tbpc.state.tx.us for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Proposal Form or on the face of the Addendum and returned with the bid.

TRD-200207518
William F. Warnick
General Counsel
Texas Building and Procurement Commission
Filed: November 18, 2002

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Comptroller of Public Accounts

Notice of Award

Notice of Awards: Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract awards.

The Comptroller's Request for Proposals (RFP #145a) was published in the August 9, 2002 issue of the *Texas Register* at (27 TexReg 7243).

The consultants will conduct management and performance reviews of various functions of independent school districts throughout the state.

A contract is awarded to Martha A. Parker, CPA, 1211 Miami Drive, Austin, Texas 78733-2549. The term of the contract is November 8, 2002 through August 31, 2003.

A contract is awarded to McConnell Jones Lanier & Murphy LLP, Summit Tower, 11 Greenway Plaza, Suite 2902, Houston, Texas 77046. The term of the contract is October 21, 2002 through August 31, 2003.

A contract is awarded to SCRS, Inc., P.O. Box 814, Wichita Falls, Texas 76307. The term of the contract is October 14, 2002 through August 31, 2003.

A contract is awarded to SoCo Consulting, Inc., P.O. Box 160671, Austin, Texas 78716. The term of the contract is October 23, 2002 through August 31, 2003.

A contract is awarded to Texas Public School Consulting, Inc., 23504 Lori Way, San Antonio, Texas 78258. The term of the contract is November 8, 2002 through August 31, 2003.

A contract is awarded to Trace Consulting Services, Inc., 10635 IH 35 N., Suite 312, San Antonio, Texas 78233. The term of the contract is November 8, 2002 through August 31, 2003.

The total amount of all six (6) master contracts is not to exceed $240,000.00 in the aggregate.

TRD-200207524
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 18, 2002

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 11/25/02 - 12/01/02 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 11/25/02 - 12/01/02 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 12/01/02 - 12/31/02 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 12/01/02 - 12/31/02 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200207535
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 19, 2002

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Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Top O'Tec Credit Union (Amarillo) seeking approval to merge with Access Credit Union (Amarillo) with the latter being the surviving credit union.

An application was received from Terrell Credit Union (Terrell) seeking approval to merge with Lone Star Credit Union (Dallas) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. 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/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-200207551
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2002

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Application(s) for a New Charter

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application for a new charter was received for Light Commerce Credit Union, Houston, Texas. The proposed new credit union will serve the congregation of New Light Church World Outreach and Worship Centers Incorporated (New Light Church), its members, employees, affiliate organizations and pastors, and any relative by blood or marriage; Light Christian Academy, its employees, students, and any relative by blood or marriage; Light Christian Academy Early Childhood and Development Center, its employees, students, and any relative by blood or marriage; New Vision Community Development, its employees, tenants and any relative by blood or marriage.

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-200207553

Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2002

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Application(s) 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 GTX Credit Union, Houston, Texas to expand its field of membership. The proposal would permit members of the Pipe Fitters Local Union 211, located at 2535 Galveston Road, Houston, Texas, to be eligible for membership in the credit union.

An application was received from Medical Community Credit Union, Odessa, Texas to expand its field of membership. The proposal would permit persons who live, work or attend school in the following Texas counties: 1) Brewster, 2) Dawson, 3) Jeff Davis, 4) Presidio, 5) Ward, and 6) Winkler, 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-200207550
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2002

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Baptist Credit Union, San Antonio, Texas - See *Texas Register* issue dated August 30, 2002.

Denton Area Teachers Credit Union, Denton, Texas - See *Texas Register* issue dated August 30, 2002.

Lone Star Credit Union, Dallas, Texas -See *Texas Register* issue dated August 30, 2002.

Members Choice Credit Union, Houston, Texas -See *Texas Register* issue August 30, 2002.

Texas Employees Credit Union, Dallas, Texas - See *Texas Register* issue dated August 30, 2002.

United Savers Trust Credit Union, Houston, Texas - See *Texas Register* issue dated August 30, 2002.

Port of Houston Credit Union, Houston, Texas - See *Texas Register* issue dated September 27, 2002.

Texans Credit Union, Richardson, Texas - See *Texas Register* issue dated September 27, 2002.

Travis County Credit Union, Austin, Texas - See *Texas Register* issue dated September 27, 2002.

U.S. Employees Credit Union, The Woodlands, Texas - See *Texas Register* issue dated September 27, 2002.

Application(s) to Amend Articles of Incorporation - Approved

Austin Metropolitan Financial Credit Union, Austin, Texas - See *Texas Register* issue dated September 27, 2002.

TRD-200207552
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2002

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Texas Department of Criminal Justice

Award Posting Notice

Texas Department of Criminal Justice, Contract Administrator: T. Ossowski. Contracts and Procurement, Contracts Br., Two Financial Plaza, Suite 525, Huntsville, Texas 77340

Solicitation No: 696-FD-2-B054. Solicitation Title: Young Laundry Building, Texas City, Texas Contract Number: 696-FD-3-3-C0043. Award Date: 11/14/02

Amount Awarded to Vendor: $1,301,900.00

Awarded Vendor(s) Name and Address: The Trevino Group Inc., 1616 West 22nd Street, Houston, Texas 77008.

HUB Status of Awarded Vendor: Hub H/M

TRD-200207536
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: November 19, 2002

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Texas Commission on Environmental Quality

Enforcement Orders

An order was entered regarding RODEN DAIRY, INC., Docket No. 2001-0070-AGR-E on November 8, 2002 assessing $19,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ, Staff Attorney at (210)490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FORT BEND PROPERTIES, INC., Docket No. 2001- 0310-MWD-E on November 12, 2002 assessing $18,300 in administrative penalties with $17,700 deferred.

Information concerning any aspect of this order may be obtained by contacting ALFRED OKPOHWORHO, Staff Attorney at (713)422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAMPAGNE-WEBBER, INCORPORATED TEXAS, Docket No. 2001-1395-AIR-E on November 12, 2002 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CX TRANSPORTATION, A DIVISION OF TIC UNITED CORP., Docket No. 2002-0391-PST-E on November 8, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512)239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RUSSELL JOHNSON DBA RUSSELL JOHNSON DAIRY, Docket No. 2001-0602-AGR-E on November 12, 2002 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DIANA GRAWITCH, Staff Attorney at (512)239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARMY AND AIR FORCE EXCHANGE SERVICE, Docket No. 2001-0237-AIR on November 12, 2002 assessing $2,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHANNON STRONG, Staff Attorney at (512)239-6201, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ROBERTO MINOR DBA A&P AUTO SERVICES, Docket No. 2001-1502-MSW-E on November 12, 2002 assessing $14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DIANA GRAWITCH, Staff Attorney at (512)239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding THE WINDFERN CORPORATION, Docket No. 2001- 1212-MWD-E on November 12, 2002 assessing $34,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DIANA GRAWITCH, Staff Attorney at (512)239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KHALIL EL-KASIH DBA C&D GROCERIES, Docket No. 2001-1060-PST-E on November 12, 2002 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting DIANA GRAWITCH, Staff Attorney at (512)239-0093, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS PARKS AND WILDLIFE DEPARTMENT, Docket No. 2001-0958-PWS-E on November 12, 2002 assessing $2,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CARRIE ANN LEMAIRE DBA TEXAS AVENUE FOOD STORE, Docket No. 2002-0238-PST-E on November 12, 2002 assessing $16,250 in administrative penalties with $3,250 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713)767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETRO-CHEMICAL TRANSPORT, INC., Docket No. 2002-0126-PST-E on November 12, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW MILLENNIUM HOMES, INC., Docket No. 2002- 0123-IWD-E on November 12, 2002 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CATHERINE ALBRECHT, Enforcement Coordinator at (713)767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DALHART, Docket No. 2001-0074-MWD-E on November 12, 2002 assessing $24,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CANTERA RESOURCES, INC. DBA PUEBLO GAS PROCESSING PLANT, Docket No. 2002-0428-AIR-E on November 12, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting GEORGE ORTIZ, Enforcement Coordinator at (915)698-9674, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CBF HOLDINGS, INC. DBA STAR STOP #3, Docket No. 2002-0236-PST-E on November 12, 2002 assessing $3,240 in administrative penalties with $648 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROLYN EASLEY, Enforcement Coordinator at (915)698-9674, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRUSHY CREEK MUNICIPAL UTILITY DISTRICT, Docket No. 2002-0571-EAQ-E on November 12, 2002 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting LAWRENCE KING, Enforcement Coordinator at (512)339-2929, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF AUSTIN, Docket No. 2001-1578-AIR-E on November 12, 2002 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MORRIS MOORE CHEVROLET- BUICK, INC., Docket No. 2002-0159-PST-E on November 12, 2002 assessing $15,500 in administrative penalties with $3,100 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Staff Attorney at (409)899-8704, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARSH TRANSPORTATION COMPANY, Docket No. 2001-1195-PST-E on November 8, 2002 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409)899-8704, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AGE REFINING, INC., Docket No. 2001-0860-MLM-E on November 12, 2002 assessing $9,500 in administrative penalties with $1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANK FLORES DBA LULLS PUBLIC SCALES AND SCALES DRIVE IN, Docket No. 2002-0084-AIR-E on November 12, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SANDRA HERNANDEZ ALANIS, Enforcement Coordinator at (956)430-6044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-CON, INC., Docket No. 2001-0959-PST-E on November 12, 2002 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409)899-8704, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILFORD LEBLANC, Docket No. 2002-0082-IHW-E on November 12, 2002 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting TOM JECHA, Enforcement Coordinator at (512)239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RANDI WILLIS DBA WILLIS DAIRY, Docket No. 2001-1070-AGR-E on November 12, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-5731, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRIJESH PATEL AND SEEMA PATEL DBA LAKESIDE FOOD MART, Docket No. 2002-0388-PST-E on November 12, 2002 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409)899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT RAMIREZ DBA KINGS FOOD AND GAS, Docket No. 2002-0279-PST-E on November 12, 2002 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915)655-9479, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JACK LYNN TILLMAN, JR. DBA HINNIES BAR & GRILL, Docket No. 2002-0121-PWS-E on November 12, 2002 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KENT HEATH, Enforcement Coordinator at (512)239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ENDURO SYSTEMS, INC. DBA ENDURO COMPOSITE INC, Docket No. 2002-0319-AIR-E on November 12, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA JOHNSON, Enforcement Coordinator at (713)422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E-Z MART STORES, INC, Docket No. 2002-0237-PST- E on November 12, 2002 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713)767-3624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DYNACAST MFG. INC., Docket No. 2002-0168-AIR-E on November 12, 2002 assessing $17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210)403-4061, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUR VALLEY TRANSPORT COMPANY DBA SUR VALLE TRANSPORT COMPANY, Docket No. 2002-0305-PST-E on November 12, 2002 assessing $6,500 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361)825-3312, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NIZAR VARANI DBA STAR FOOD MART, Docket No. 2002-0296-PST-E on November 12, 2002 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting ALAYNE FURGURSON, Enforcement Coordinator at (817)588-5812, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANTONIO LOPEZ DBA SONORA TIRE SERVICE, Docket No. 2002-0281-PST-E on

November 12, 2002 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK NEWMAN, Enforcement Coordinator at (915)655-9479, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SILVER PINES ENERGY CORPORATION, Docket No. 2002-0582-AIR-E on November 12, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting SHEILA SMITH, Enforcement Coordinator at (512)239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF RUNAWAY, Docket No. 2001-1311-MWD-E on November 12, 2002 assessing $13,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEYER & MEYER INVESTMENTS INC. DBA ROYAL TRAILER PARK, Docket No. 2001-1314-PWS-E on November 12, 2002 assessing $1875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512)239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PUMPELLY OIL, INC., Docket No. 2002-0242-MSW-E on November 12, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting SUSAN KELLY, Enforcement Coordinator at (409)899-8704, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF PORT ARTHUR, Docket No. 2002-0318-PST- E on November 12, 2002 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409)899-8760, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DEAN WORD COMPANY, LTD., Docket No. 2001- 1173-EAQ-E on November 12, 2002 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210)403-4061, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200207555
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 19, 2002

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Notice of the Annual 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 registry (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 the Act, §361.183(a) and 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 (US 80) in Colorado City, Mitchell County: tank farm and refinery.

2. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

3. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

4. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

5. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/ sludge disposal, inactive landfill.

6. Texas American Oil. Located approximately three miles north of Midlothian on Old State Highway 67, Ellis County: waste oil recycling.

7. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

8. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

9. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

10. 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.

11. 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.

12. 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.

13. 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.

14. Aztec Ceramics. Located at 4735 Emil Road, San Antonio, Bexar County: tile manufacturing.

15. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

16. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

17. 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.

18. 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.

19. Unnamed Plating. Located at 6816-6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

20. 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 which 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. Lyon Property. Located on US Highway 385, approximately one mile north of the intersections of Farm Road 1871 and US Highway 385, London, Kimble County: wire burning operation for metal recovery.

4. J. C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycler.

5. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

6. Hicks Field Sewer Corporation. Located approximately 1.8 miles west of the intersection of US Highway 81-287 and Farm-to-Market Road 156, Tarrant County: former sewage treatment facility.

7. Crim-Hammett. Located at 801 Highway 64, Henderson, Rusk County: open pit dumping, buried waste.

8. Phipps Plating. Located at 305 East Grayson Street, San Antonio, Bexar County: metal plating.

9. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

10. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

11. Voda Petroleum, Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility

12. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1300 feet east of the Brazoria- Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.

13. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

14. Old Lufkin Creosoting. Located at 1411 East Lufkin Avenue, Lufkin, Angelina County: wood treatment.

15. Materials Recovery Enterprises. Located about 4 miles southwest of Ovalo, near US 83 and Farm Road 604, Taylor County: Class I industrial solid waste disposal site.

16. 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.

17. 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.

18. American Zinc. Located approximately 3.5 miles north of Dumas on US 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

19. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

20. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

21. 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 from unknown source.

22. Kingsbury Metal Finishing, Inc. Located at 1720 Farm-to-Market Road 1104, Kingsbury, Guadalupe County: electroplating facility.

23. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located east side of US Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

24. 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.

25. Barlow's Wills Point Plating. Located on the south side of US 80, approximately 3.4 miles east of its intersection with Texas 64, in Wills Point, Van Zandt County: inactive electroplating.

26. McNabb Flying Service. Located 1.5 miles northwest of Alvin, approximately 1 mile east of State Highway 6, at the intersection of Brazoria County roads 146 and 539, Brazoria County: aerial pesticide applicator.

27. Melton Kelly Property. Located on County Road 3250, four miles northeast of Chatfield: waste from illegal salvage fires.

Since the last publication on May 24, 2002, the TCEQ has determined that six facilities, Avinger Development Company, Cass County; Gulf Metals Industries, Harris County; Harkey Road, Brazoria County; Higgins Wood Preserving, Angelina County; Sampson Horrice, Dallas County; and Stoller Chemical Company, Hale County, no longer pose an imminent and substantial endangerment to public health and safety or the environment and in accordance with 30 TAC §335.344(c), have been deleted. Also, the TCEQ has determined that four facilities, Hicks Field Sewer Corporation, Tarrant County; James Barr Facility, Brazoria County; Lyon Property, Kimble County; and Rogers Delinted Cottonseed Company, Collin County, may pose an imminent and substantial endangerment to public health and safety or the environment, and in accordance with the Act §361.184(a), have been added to the list of sites proposed to the state Superfund registry.

To date, 29 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 Mercury, Brazoria County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes 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; LaPata Oil Company, Harris County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton 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 D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas, telephone (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 Building D and Building E. Copying of file information is subject to payment of a fee.

TRD-200207557

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 19, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of October 21, 2002 through October 29, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AQUASOURCE UTILITY, INC. has applied for a renewal of TNRCC Permit No. 11314-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located north of Cypress Creek, approximately two miles northwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960 in Harris County, Texas.

BEACON HOLDINGS CORPORATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 13637-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The plant site is located approximately 500 feet southwest of the intersection of Farm-to-Market Road 350 and Farm-to-Market Road 3126 on the shoreline of Lake Livingston in Polk County, Texas.

CITY OF BROADDUS has applied for a renewal of TNRCC Permit No. 11772-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 135,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No.11772-001 will replace the existing TNRCC Permit No.11772-001. The plant site is located approximately 300 feet west of State Highway 147, adjacent to Caney Creek in San Augustine County, Texas.

CITY OF BYERS has applied for a renewal of TPDES Permit No. 10890-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 43,000 gallons per day. The facility is located approximately 400 feet east of Byers City Lake in the City of Byers and approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79 in Clay County, Texas.

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC which operates The Energy Control & Data Center, which primarily provides control of electricity transmission and distribution, has applied for a major amendment to TPDES Permit No. 13368-001 to authorize the discharge of cooling tower blowdown and low volume waste (floor drains) at a daily average flow not to exceed 10,000 gallons per day via new Outfall 002, and to reclassify and renumber the existing permit from a domestic permit (Permit No. 13368-001) to an industrial permit (proposed Permit No. 04483). The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via Outfall 001. The facility is located at 16303 State Highway 249, immediately west of the T.H. Wharton Electric Generating Station, approximately one mile southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960, Harris County, Texas.

CHARTERWOOD MUNICIPAL UTILITY DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0046841 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11410-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located approximately 3.5 miles northwest of the intersection of State Highway 249 (West Montgomery Road) and Farm-to-Market Road 1960, on the south bank of Pillot Gully, at 15820 Quill Drive in the City of Houston in Harris County, Texas.

COASTAL CHEMICAL CO., L.L.C. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 03483. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The plant site is located on the north side of Pasadena Boulevard, approximately 11,500 feet south-southwest of the intersection of State Highway 225 and East Belt Drive in Harris County, Texas.

E.I. DU PONT DE NEMOURS AND COMPANY which operates a petrochemical plant complex producing organic and inorganic chemicals in separate units, has applied for a major amendment to TPDES Permit No. 00473 to authorize a second phase for the start-up of a Phthaloyl Chloride Unit; to remove effluent limitations and monitoring requirements for total mercury at 001; and reduce the frequency of monitoring requirements for dichlorobromomethane and dibromochloromethane at 001. The current permit authorizes the discharge of process wastewater, utility wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 13,700,000 gallons per day via Outfall 001; and storm water from various plant areas on an intermittent and flow variable basis via Outfalls 002, 004, 005, 006, 008, 010, 011, 015, 018, and 020. The facility is located on State Highway 347, on the west bank of the Neches River at the McFaddin Bend Cutoff, eight miles north of Sabine Lake, and six miles south of the City of Beaumont, Jefferson County, Texas.

CITY OF ELKHART has applied for a renewal of TPDES Permit No. 10735-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The facility is located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 109 has applied for a renewal of TPDES Permit No. 11533-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000,000 gallons per day. The facility is located on Atascocita Road approximately 0.6 miles south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to-Market Road 1960 in Harris County, Texas.

HOLT TEXAS PROPERTIES, INC AND HOLT TEXAS LTD which operates the Tyler Plant, a Caterpillar Inc. dealership providing sales, leasing, and repair or earth moving equipment and lift trucks and sales and repair of on-highway truck engines, has applied for a new permit, Proposed Permit No. 04372 to authorize the disposal of equipment wash water and storm water at a annual average flow not to exceed 700 gallons per day, excluding storm water, via evaporation.. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located north of and adjacent to State Highway 31 at a site approximately two miles west of the State Highway 31/Loop 323 intersection, Smith County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. 10495-050 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,760,000 gallons per day . The plant site is located at 7410 Galveston Road (State Highway No. 3) in the City of Houston in Harris County, Texas.

CITY OF HOUSTON, DEPARTMENT OF PUBLIC WORKS AND ENGINERING has applied for a renewal of TPDES Permit No. 10495-101, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 15600 Rock House Road, approximately 1.1 miles east-southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 525 in Harris County, Texas.

CITY OF HUNTSVILLE has applied for a renewal of TPDES Permit No. 10781-004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located on Farm-to-Market Road 1374, approximately 4 miles south of the intersection of Interstate Highway 45 and Farm-to-Market Road 1374 in Walker County, Texas.

LAKE FOREST PLANT ADVISORY COUNCIL has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 11084-001, which authorizes the discharge of treated domestic at an annual average flow not to exceed 2,760,000 gallons per day. The plant site is located south of Cypress Creek approximately 0.5 miles west of Farm-to-Market Road 149 and 1.25 miles north of Grant Road in Harris County, Texas.

CITY OF LINDEN has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 10429-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1,600 feet southwest of the intersection of State Highway 155 and Hamilton Street in Cass County, Texas.

CITY OF LIVINGSTON has applied for a renewal of TCEQ Permit No. 10208-001, which authorizes the discharge of treated domestic wastewater effluent at an annual average flow not to exceed 2,250,000 gallons per day. The facility is located approximately 3200 feet north of the intersection of U.S. Highway 59 and State Highway Loop 90, approximately 1 mile southeast of the intersection of U.S. Highway 190 and U.S. Highway 59 in Polk County, Texas.

CITY OF LONE STAR has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14365-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 440,000 gallons per day. The facility is located approximately 1,500 feet east of U.S. Highway 259 on Morris County Road 2315 and approximately 4,000 feet south of the intersection of U.S. Highway 259 and Farm-to-Market Road 729 in Morris County, Texas.

MONTGOMERY COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10857-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. The facility is located approximately 11 miles south of the City of Conroe, 3 miles west of the Interstate Highway 45 crossing of Spring Creek and at the south end of Glen Loch Drive in the Rimber Ridge-Timber Lake subdivision in Montgomery County, Texas.

PINE TREE ESTATES NO. 2 LANDOWNER ASSOCIATION INC. has applied for a renewal of TNRCC Permit No. 13831-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The plant site is located approximately 1,000 feet north of Golden Triangle Boulevard on Golden Triangle Circle and approximately 4,000 feet west of the intersection of Farm-to-Market Road 1709 and U.S. Highway 377 in Tarrant County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11365-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,050 gallons per day via surface irrigation of 4.5 acres of pasture land. The facility and disposal site are located within Lake Brownwood State Park, approximately 5.5 miles east of the intersection of State Highway 279 and Park Road 15 in Brown County, Texas.

UNITED STATES DEPARTMENT OF THE AIR FORCE, LAUGHLIN AIR FORCE BASE has applied for a renewal of TPDES Permit No. 12651-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 490,000 gallons per day. The facility is located on the southwest section of Laughin Air Force Base, approximately 2.3 miles northeast of the intersection of U.S. Highway 277 and Spur 317, east of the City of Del Rio in Val Verde County, Texas.

VALLEY MUNICIPAL UTILITIES DISTRICT NO. 2 which operates a reverse osmosis potable water treatment plant, has applied for a renewal of TPDES Permit No. 03936, which authorizes the discharge of reverse osmosis reject water at a daily average flow not to exceed 500,000 gallons per day via Outfall 001. The facility is located at 100 Hidalgo, on the west side of State Highway 83, approximately 1.25 miles north of the intersection of State Highway 83 and Farm-To-Market Road 511, and approximately 3.5 miles south of the intersection of State Highway 83 and State Highway 100, in the City of Rancho Viejo, Cameron County, Texas.

CITY OF WILLS POINT has applied for a major amendment to TNRCC Permit No. 10623-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 510,000 gallons per day to a daily average flow not to exceed 800,000 gallons per day. The facility is located off Goshen Avenue, approximately 4,000 feet east of State Highway 47 and 6,000 feet south of U.S. Highway 80 in Van Zandt County, Texas.

WOODCREEK MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11933-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 3400 feet southeast of the intersection of Aldine-Westfield Road and Farm-to-Market Road 1960, on the south side of Turkey Creek in Harris County, Texas.

TRD-200207422
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 13, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of October 28, 2002 through October 31, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AQUASOURCE DEVELOPMENT COMPANY has applied for a renewal of TPDES Permit No. 14141-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located 1/8 mile southeast of the intersection of Farm-to-Market Road 1488 and Farm-to-Market Road 2978 in Montgomery County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TNRCC Permit No. 11314-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located north of Cypress Creek, approximately two miles northwest of the intersection of Interstate Highway 45 and Farm-to- Market Road 1960 in Harris County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 12519-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately three-eight (3/8) mile east of Kuykendahl Road and approximately one (1) mile north of the intersection of Hufsmith Road and Kuykendahl Road in Harris County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 13209-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 4,000 feet southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 3126 in Polk County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 13619-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,000 feet southeast of Kuykendahl Road crossing of Willow Creek and 800 feet east of Willow Creek, 26.5 miles northwest of downtown Houston in Harris County, Texas.

ARTHUR E. BAYER has applied for a renewal of TPDES Permit No. 13819-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located adjacent to the east right-of-way of Lemm Gully, approximately 1,400 feet south of Spring- Cypress Road in Harris County, Texas.

CITY OF BROADDUS has applied for a renewal of TNRCC Permit No. 11772-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 135,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No.11772-001 will replace the existing TNRCC Permit No.11772-001. The plant site is located approximately 300 feet west of State Highway 147, adjacent to Caney Creek in San Augustine County, Texas.

CITY OF BYERS has applied for a renewal of TPDES Permit No. 10890-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 43,000 gallons per day. The facility is located approximately 400 feet east of Byers City Lake in the City of Byers and approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79 in Clay County, Texas.

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC which operates The Energy Control & Data Center, which primarily provides control of electricity transmission and distribution, has applied for a major amendment to TPDES Permit No. 13368-001 to authorize the discharge of cooling tower blowdown and low volume waste (floor drains) at a daily average flow not to exceed 10,000 gallons per day via new Outfall 002, and to reclassify and renumber the existing permit from a domestic permit (Permit No. 13368-001) to an industrial permit (proposed Permit No. 04483). The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via Outfall 001. The facility is located at 16303 State Highway 249, immediately west of the T.H. Wharton Electric Generating Station, approximately one mile southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960, Harris County, Texas.

CHARTERWOOD MUNICIPAL UTILITY DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0046841 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11410-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located approximately 3.5 miles northwest of the intersection of State Highway 249 (West Montgomery Road) and Farm-to-Market Road 1960, on the south bank of Pillot Gully, at 15820 Quill Drive in the City of Houston in Harris County, Texas.

CITY OF ELKHART has applied for a renewal of TPDES Permit No. 10735-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The facility is located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas.

CITY OF HARDIN has applied for a new TPDES Permit No. 14369-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility will be located approximately 5,000 feet northwest of the intersection of State Highway 146 and County Road 2005 in Liberty County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 109 has applied for a renewal of TPDES Permit No. 11533-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000,000 gallons per day. The facility is located on Atascocita Road approximately 0.6 miles south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to-Market Road 1960 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 230 has applied for a renewal of TPDES Permit No. 12877-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 760,000 gallons per day. The facility is located approximately 3,000 feet west of Farm-to-Market Road 149 (State Highway 249) and approximately 4,000 feet south of Cypress Creek in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 366 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14359-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 7300-A Chippewa Street, Houston, Texas, on the west side of North Houston Rosslyn Road, approximately 2,200 feet north of Breen Road and 1,500 feet west of the end of Chippewa Boulevard in Harris County, Texas.

HOLY TRINITY EPISCOPAL SCHOOL OF GREATER HOUSTON, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14381- 001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility will be located approximately 1,000 feet west of the intersection of Beltway 8 and C.E. King Parkway in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit No. 10495-101, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The plant site is located at 15600 Rock House Road, approximately 1.1 miles east-southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 525 in Harris County, Texas.

LAKE WHITNEY RV COMMUNITY has applied for a renewal of TCEQ Permit No. 13891- 001, which authorizes, in the Interim phase, the subsurface disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. In the final phase, the permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13891-001 will replace the existing TCEQ Permit No. 13891-001.

CITY OF LIVINGSTON has applied for a renewal of TCEQ Permit No. 10208-001, which authorizes the discharge of treated domestic wastewater effluent at an annual average flow not to exceed 2,250,000 gallons per day. The facility is located approximately 3200 feet north of the intersection of U.S. Highway 59 and State Highway Loop 90, approximately 1 mile southeast of the intersection of U.S. Highway 190 and U.S. Highway 59 in Polk County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 18 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0100331 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13273-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The plant site is located adjacent to Lake Conroe and Rusty Creek; approximately 1.0 mile southwest of the intersection of Farm-to-Market Road 1097 and Bentwater Drive in Montgomery County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 24 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TPDES Permit No. 14116-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 2.5 miles east of U.S. Highway 59 and 0.5 mile northwest of the point where White Oak Creek leaves Montgomery County in Montgomery County, Texas.

MONTGOMERY COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 10857-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 420,000 gallons per day. The facility is located approximately 11 miles south of the City of Conroe, 3 miles west of the Interstate Highway 45 crossing of Spring Creek and at the south end of Glen Loch Drive in the Rimber Ridge-Timber Lake subdivision in Montgomery County, Texas.

NORTH GREEN MUNICIPAL UTILITY DISTRICT has applied for a renewal of TCEQ Permit No. 12206-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located on the west side of Hardy Road, approximately 1/2 mile south of the intersection of Hardy Road and Rankin Road in Harris County, Texas.

NORTHWEST FREEWAY MUNICIPAL UTILITY DISTRICT has applied for a renewal of TCEQ Permit No. 11913-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately three-fourth (3/4) of a mile north-northwest of the intersection of Becker Road and U.S. Highway 290 in Harris County, Texas.

R.E.D. CYPRESS CREEK, LTD. AND COMPAQ COMPUTER CORPORATION have applied for a major amendment to TNRCC Permit No. 02391 to revise the permit from an industrial to a domestic wastewater permit which requires changing to a new permit number, Permit No. 14130-001. The applicant is also requesting to decrease the discharge of treated wastewater from a daily average flow not to exceed 150,000 gallons per day to 48,000 gallons per day and to remove effluent limitations and monitoring requirements for Chemical Oxygen Demand, Oil and Grease, Copper, Lead, Nickel, and Zinc. The plant site is located at 24500 U.S Highway 290, southeast of the Town of Cypress, north of the U.S. Highway 290 Cypress Creek bridge and on the east side of Dry Creek in Harris County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. 12009-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located within the right-of-way of U.S. Highway 59 approximately six and 1/2 mile northeast of the City of Linden in Cass County, Texas.

UNIVERSITY OF TEXAS has applied for a renewal of TNRCC Permit No. 13646-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The plant site is located approximately 10 miles southeast of the intersection of State Highway 166 and State Highway 118 at the McDonald Observatory on Mount Locke, approximately 10 miles northwest of Fort Davis in Jeff Davis County, Texas.

ZAVALA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14367-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 263,000 gallons per day. The facility will be located approximately 4,500 feet southwest of the intersection of Highway 83 and Highway 57 in Zavala County, Texas.

TRD-200207554
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 19, 2002

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Notice of Water Rights Application

Notices mailed November 12, 2002.

APPLICATION NO. 5786; John A. and Ida M. Taylor, 1331 CR 223, Kempner, Texas 76539, applicant, seeks a Water Use Permit pursuant to Texas Water Code (TWC) 11.121 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Applicant seeks authorization to divert and use not to exceed 100 acre-feet of water per annum from the Lampasas River, Brazos River Basin, Burnet County for agricultural purposes to irrigate to tracts of land totaling 53.07 acres in the John W. Cassidy Survey No. 16, Abstract No. 223 and the David Kincaid Survey, Abstract No. 508 in Burnet County. Water will be diverted at a maximum rate of .558 cfs (250 gpm). The diversion point on the Lampasas River is located S 71 degrees E, 2,780 feet from the southeast corner of the aforesaid Cassidy Survey, also being at Latitude 30.997 degrees N, Longitude 97.940 degrees W. The diversion point is also 30 miles in a northeast direction from Burnet and 1.2 miles in a westerly direction from Oakalla, Texas. Ownership of the land to be irrigated is evidenced by a Warranty Deed, Volume 511, Pages 111-115, as recorded in the Real Property records in Burnet County. The application was received on July 18, 2002 and additional information was received on September 23, 2002. The application was accepted for filing and declared administratively complete on September 25, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 4120C; Oehmig Land & Cattle Company, LLC, 8 Greenway Plaza, Suite 702, Houston, Texas 77046, applicant, seeks to amend Water Use Permit 3830 (Application No. 4120), as amended, pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Water Use Permit 3830 (Application No. 4120), as amended, authorizes the owner to divert and use not to exceed 450 acre-feet of water per annum from a point on Blue Creek, a tributary of the Colorado River, Colorado River Basin for agricultural purposes to irrigate 250 acres of land out of four tracts totaling 475.79 acres located in the W.F. York Survey, Abstract No. 397, the A.P. Borden Survey, Abstract No. 921, and the John Caldwell League, Abstract No. 10, Wharton County, Texas. Water is diverted from a diversion point located on the northeast, or left, bank of Blue Creek, S 84 degrees 30' W, 2,500 feet from the east corner of the said Borden Survey, also being approximately 29.13 N Latitude and 96.11 W Longitude, at a maximum diversion rate of 4.0 cfs (1,800 gpm). Ownership of the land to be irrigated is evidenced by a Warranty Deed recorded in Volume 343, Page 206 of the Deed Records of Wharton County. The permit, as amended, contains a special condition 4.(a) that states the permit shall expire on December 31, 2002. Applicant seeks to amend Water Use Permit 3830, as amended, by extending or deleting the expiration date of December 31, 2002. The amendment application was received on June 17, 2002. Additional information was received on August 22 and September 23, 2002. The application was determined to be administratively complete and filed on October 7, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200207423
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 13, 2002

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Notice of Water Rights Application

Notices mailed November 15, 2002 through November 18, 2002.

APPLICATION NO. 5396A; Hannis T. Turberville, et al., 116 C.R. 437, Stockdale, Texas 78160, applicants, seek to amend Water Use Permit No. 5396 pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Water Use Permit No. 5396 authorizes the owners to divert and use not to exceed 2,076 acre-feet of water per annum from three points on Donna Drain, tributary of Laguna Madre, tributary of the Gulf of Mexico, Nueces-Rio Grande Coastal Basin, for irrigation of 954.157 acres of land out of several tracts totaling 954.157 acres located in the Las Mestenas Grant (Vicente de Ynojosa Survey, Abstract No. 75), Hidalgo County, Texas. Water is diverted from three diversion points at a maximum combined rate of 26.74 cfs (12,000 gpm). Diversion Point No. 1 is located on Donna Drain at a point Latitude 26.343 N and Longitude 97.962 W, also being N 70 degrees E, 13,750 feet from the southwest corner of the Jose Narciso Cabazos Survey (San Juan de

Carritos), Abstract No 571. Diversion Point No. 2 is located on Donna Drain at a point Latitude 26.339 N and Longitude 97.962 W, also being N 65 degrees E, 14,350 feet from the aforesaid Cabazos survey Corner. Diversion Point No. 3 is located on Donna Drain at a point Latitude 26.339 N and Longitude 97.966 W, also being N 68 degrees E, 15,500 feet from said survey corner. Ownership of the land to be irrigated is evidenced by a Warranty Deed recorded in Volume 1571, Pages 940-942, Volume 1609, pages 612-614, and Volume 1350, pages 753-756 of the Hidalgo County Deed Records. The permit, as amended, contains Special Condition 4.A. that states the permit shall expire on December 31, 2002. Applicants seek to amend Water Use Permit No. 5396 by extending or deleting the expiration date of December 31, 2002. The application was received on August 12, 2002, and additional information was received on September 24 and October 29, 2002. The application was declared administratively complete and filed with the Chief Clerk's Office on November 5, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 05-4724B; Hide-A-Way Lake Club, Inc., 302 Hide-A-Way Lane Central, Lindale, Texas 75771, applicant, seeks to amend Certificate of Adjudication No. 05-4724, as Amended, pursuant to Texas Water Code §§11.122 and 11.085 and Texas Commission on Environmental Quality Rules 30 TAC § 295.1, et seq. Certificate of Adjudication No. 05-4724, as amended, authorizes the applicant to maintain two existing dams and reservoirs on Hubbard Branch, tributary of Duck Creek, tributary of the Sabine River, Sabine River Basin for recreational and agricultural (irrigation) purposes. Reservoir No. 1 impounds not-to-exceed 1,715 acre-feet of water and reservoir No. 2 impounds not to exceed 1,101 acre-feet of water. Also authorized by Certificate of Adjudication No. 05-4724, as amended, is the diversion and use of 359.42 acre-feet of water per annum from the perimeter of reservoir No. 1 at a maximum diversion rate of 1.56 cfs (700 gpm) for the irrigation of a total of 121.67 acres of land in Smith County. Applicant seeks to amend Certificate of Adjudication No 05-4724, as amended, to authorize the addition of 8 existing on-channel reservoirs at a combined impoundment of 60.9 acre-feet, resulting in a combined total impoundment of 2,876.9 acre-feet of water on Hubbard Creek. Applicant seeks also to add a diversion point on the perimeter of Reservoir No. 6. The proposed diversion point will be located 10 miles northwest of the City of Tyler, Smith County, bearing S 22.15 W, 2,683 feet from the northeast corner of the P. Archer Original Survey, Abstract No. 52, in Smith County, also being 32.478 N Latitude and 95.456 W Longitude. The diversion rate at this point will be 0.56 cfs (250 gpm), resulting in a maximum combined diversion rate of 1.89 cfs (850 gpm). No increase in the amount of water per annum is being requested. Applicant may supplement diversions from Reservoir No. 6 with water from previously authorized Reservoir No. 1. Interbasin transfer authorization is requested as some of the land to be irrigated with water from the Sabine Basin is located in the Neches Basin. The reservoirs are all located approximately 10 miles northwest of Tyler, Texas. The amendment application was received on January 22, 2002. Additional information and fees were received on July 15, July 23, and September 9 2002. The application was determined to be administratively complete on September 9, 2002. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 14-1459A; Ruben E. Ruebsahm, P.O. Box 235, Stonewall, Texas 78671, applicant, seeks an amendment to Certificate of Adjudication No. 14-1459 pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. Certificate of Adjudication No. 14-1459 authorizes owner to divert and use not to exceed 25.5 acre- feet of water per annum from the Pedernales River to irrigate a maximum of 34 acres of land out of a 260 acre tract in the Epaphras W. Bull Survey No. 11, at a maximum rate not to exceed 4.01 cfs (1,800 gpm). The priority date of the certificate is 1953. Pursuant to an agreement dated March 25, 2002, the applicant seeks to amend Certificate of Adjudication No. 14-1459 by adding a diversion point on Williams Creek, tributary of the Pedernales River, tributary of the Colorado River, Colorado River Basin and to divert and use not to exceed 12.75 acre-feet of water, a portion of the 25.5 acre- feet of water authorized, for agricultural purposes to irrigate up to 32 acres of land in the Otto Wilke Survey No. 1062, in Gillespie County, Texas. The maximum combined diversion rate at both diversion points shall not exceed of 4.01 cfs (1,800 gpm). The proposed diversion point is located N 25 degrees E, 1,668 feet from the southwest corner of the aforesaid survey, in Gillespie County, also being at Latitude 30.172 N, Longitude 98.594 W. Ownership of the additional land to be irrigated is evidenced by Gift Deed, Vol.155, Page 224, as recorded in the official records of Gillespie County. Pursuant to 30 TAC 297.45, the authorization to divert water authorized by this amendment at the new diversion point will be junior in priority to the intervening water right holders of record, as they exist on the date of the issuance of any amendment resulting from this application. The application was received on October 25, 2002 and was accepted for filing and declared administratively complete on October 29, 2002. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below by December 9, 2002.

Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200207556

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 19, 2002

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 22, 2002 Executive Director of the Texas Commission on Environmental Quality, Petitioner v. B & S Cattle Feeders, L.L.C.; SOAH Docket No. 582-02-0709; TCEQ Docket No. 2000-0466-AGR-E. In the matter to be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC P.O. Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200207421
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 13, 2002

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Proposal for Decision

The State of Office Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on November 6, 2002 Executive Director of the Texas Commission on Environmental Quality, Petitioner v. National Oil Recovery Corporation; SOAH Docket No. 582-02-0389; TCEQ Docket No. 2000-0586-MLM-E. In the matter to be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200207487
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 15, 2002

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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 **January 6, 2003**. 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 January 6, 2003**. 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: Gary Ward and Lisa Ward dba Advanced Wastewater Services; DOCKET NUMBER: 2001-1563-OSI-E; IDENTIFIER: On-Site Sewage Facility Installer Certification Numbers 3557 and 6426; LOCATION: Silsbee, Hardin County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.7(h), by failing to submit service reports, submit the required number of inspection reports and complete information, and failure to timely submit half, or less than half, of the required number of inspection reports; PENALTY: $600; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: AES Deepwater, Inc.; DOCKET NUMBER: 2002-0612-AIR-E; IDENTIFIER: Air Account Number HG-1495-V; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: power generation plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 9276/PSD-TX-499, and THSC, §382.085(b), by failing to keep complete records showing that individual components were being checked for leaks, keep records of all repairs and replacements due to ammonia leaks, and maintain records of all repairs and replacements made to equipment associated with handling of ammonia-nitrogen; 30 TAC §122.146(5) and THSC, §382.085(b), by failing to submit all the required information to meet the requirements of annual compliance certification; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit deviation reports; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Ameripol Synpol Corporation; DOCKET NUMBER: 2002-0645-IHW-E; IDENTIFIER: Solid Waste Registration (SWR) Number 30144; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: industrial solid waste landfill; RULE VIOLATED: 30 TAC §37.21, by failing to provide financial assurance mechanisms; PENALTY: $800; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: ASYA Enterprises, Inc. dba Phillips 66; DOCKET NUMBER: 2002-0832- PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0010913; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC

§115.245(2) and THSC, §382.085(b), by failing to conduct an annual pressure decay compliance test on the Stage II vapor recovery system (VRS); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(5) COMPANY: Beaumont Country Club; DOCKET NUMBER: 2002-0919-PST-E; IDENTIFIER: PST Facility Identification Number 14627; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: golf course maintenance; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the underground storage tank (UST) registration and self-certification form is fully and accurately completed and make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.7(d)(3) and the Code, §26.346(a), by failing to amend the registration when the use of the UST was discontinued; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703- 1892, (409) 898-3838.

(6) COMPANY: Best Friend's Treasures, Inc. dba BFT Family Trailer Park; DOCKET NUMBER: 2002-0889-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2370069; LOCATION: Waller, Waller County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F), (f)(3), and (g), and THSC, §341.031, by failing to collect and submit additional routine water samples, by exceeding the maximum contaminant level (MCL) for total coliform, and by not providing public notice related to its MCL and failing to collect and submit additional samples for bacteriological analysis; PENALTY: $1,563; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Crider Dairy, Inc.; DOCKET NUMBER: 2002-0897-AGR-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 004160-000; LOCATION: Godley, Johnson County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a), TPDES Permit Number 004160-000, and the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge; and 30 TAC §321.39(f)(11) and TPDES Permit Number 004160-000, by failing to maintain adequate storm water storage capacity; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Alayne Furgurson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Crockett Gas Processing Company; DOCKET NUMBER: 2002-1006-AIR-E; IDENTIFIER: Air Account Number CZ-0011-M; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit its annual Title V compliance certification and deviation report; 30 TAC §122.503(a)(1) and THSC, §382.085(b), by failing to submit an application for a new authorization to operate; 30 TAC §122.504(a)(4)(A) and THSC, §382.085(b), by failing to submit an updated general operating permit application; and 30 TAC §101.10(b)(2) and THSC, §382.085(b), by failing to accurately report the actual emissions of sulfur dioxide; PENALTY: $15,625; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239- 1670; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(9) COMPANY: CWS Communities Trust dba Creekside Mobile Home Community; DOCKET NUMBER: 2001-0153-PWS-E; IDENTIFIER: PWS Number 0610191; LOCATION: Lewisville, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.103(5), §290.106(a) and (e)(2) (now 30 TAC §290.109(c) and (g) and §290.122), and THSC, §341.033(d), by failing to collect and submit the routine monthly water samples for bacteriological analysis, submit the required number of routine monthly water samples for bacteriological analysis, and provide public notice; 30 TAC §291.21(c)(7) and §291.93(2)(A), and the Code, §13.136(a), by failing to ensure that its tariff included an approved drought contingency plan (DCP); and 30 TAC §288.30(3)(B) and the Code, §13.132(a)(1), by failing to make available for inspection an adopted DCP; PENALTY: $2,498; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: GB Biosciences Corporation; DOCKET NUMBER: 2002-0346-IHW-E; IDENTIFIER: SWR Number 30552; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: hazardous waste treatment and storage; RULE VIOLATED: 30 TAC §335.2(b) and 40 Code of Federal Regulations (CFR) §270.1(c), by failing to dispose of hazardous waste at an authorized facility; and 30 TAC §335.431(c)(1) and 40 CFR §268.40(a)(1), by failing to meet the applicable treatment standards; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Grady Crawford Construction Company, Inc.; DOCKET NUMBER: 2002- 1010-PST-E; IDENTIFIER: PST Facility Identification Number 41086; LOCATION: Longview, Gregg County, Texas; TYPE OF FACILITY: construction operation; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit the UST registration and self-certification form and make available to a common carrier a valid, current delivery certificate; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(12) COMPANY: Greif Bros. Corporation; DOCKET NUMBER: 2002-0957-AIR-E; IDENTIFIER: Air Account Number HG-1221-O; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: drum manufacturing; RULE VIOLATED: 30 TAC §101.10 and THSC, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Hobas Pipe USA, Inc.; DOCKET NUMBER: 2002-1089-AIR-E; IDENTIFIER: Air Account Number HG-1531-T; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fiberglass pipe fabricating; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,840; ENFORCEMENT COORDINATOR: Catherine Sherman, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Naji Othman Ahmad dba Hopper Road Food Market; DOCKET NUMBER: 2002-0708-PST-E; IDENTIFIER: PST Facility Identification Number 0030096; 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 inventory control at a retail facility; 30 TAC §334.50(b)(1)(A) and (2)(A)(i) and the Code, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases, provide release detection for the piping, and equip each separate pressurized line with an automatic leak detector; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to provide overfill prevention equipment; 30 TAC §334.8(c)(4)(B) and the

Code, §26.346(a), by failing to submit a UST registration and self-certification form; 30 TAC §334.49(e)(B)(i) and the Code, §26.3475(d), by failing to maintain corrosion protection inspection records; and 30 TAC §115.247(2) and THSC, §382.085(b), by failing to submit a Stage II Vapor recovery exemption form; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Huff Brous McDowell & Montesi Management, Inc.; DOCKET NUMBER: 2002-0857-PWS-E; IDENTIFIER: PWS Number 2200319; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1), (f)(3)(D)(ii), and (m), and THSC, §341.033(a), by failing to maintain a record of water works operations and maintenance activities, employ a certified water works operator holding a valid class "D" or higher ground water operator's certificate, provide records of tank inspections on the ground storage and pressure tanks, and maintain the general appearance of the system's facilities and equipment; 30 TAC §290.41(c)(1)(F), by failing to secure sanitary easements and record the easements at the county courthouse; 30 TAC §290.42(k), by failing to compile a plant operations manual; 30 TAC §290.43(c), by failing to cover and design, fabricate, erect, test, and disinfect in strict accordance with current American Water Works Association, all facilities for potable water storage; 30 TAC §290.43(c)(2), (d)(2), and (4), by failing to provide the ground storage tank with a properly designed roof access opening, provide a pressure release device on the pressure tanks, and provide a properly installed water level indicator; and 30 TAC §290.45(d)(2)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Timothy P. Richardson dba Integrity Tree Care and Landscaping; DOCKET NUMBER: 2002-0634-AIR-E; IDENTIFIER: Air Account Number SK-0575-A; LOCATION: Flint, Smith County, Texas; TYPE OF FACILITY: tree trimming and landscaping; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent the outdoor burning of tree trimming material; PENALTY: $600; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535- 5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: IZR Corporation dba Garland Fina; DOCKET NUMBER: 2002-0573-PST-E; IDENTIFIER: PST Facility Identification Number 72525; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to fully and accurately complete and submit a UST registration and self-certification form; PENALTY: $750; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Jarvis Entertainment Group, Inc. dba Tomball Bowling Center; DOCKET NUMBER: 2002-0974-PWS-E; IDENTIFIER: PWS Number 1012205; LOCATION: Tomball, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c) and (g), §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice related to the failure to collect and submit additional routine bacteriological samples; PENALTY: $1,875; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Jeld-Wen, Inc.; DOCKET NUMBER: 2002-1023-AIR-E; IDENTIFIER: Air Account Number HR-0058-H; LOCATION: Sulphur Springs, Hopkins County, Texas; TYPE OF FACILITY: door manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by allegedly operating the Core Embosser without a permit; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20) COMPANY: Jim Hubble and Judy Hubble dba Judy K's Kountry Kitchen; DOCKET NUMBER: 2002-0939-PWS-E; IDENTIFIER: PWS Number 0680210; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; and 30 TAC §290.51(a)(6), by failing to pay past due public health service fees; PENALTY: $400; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705- 5404, (915) 570-1359.

(21) COMPANY: City of Lamesa; DOCKET NUMBER: 2002-0728-PST-E; IDENTIFIER: PST Facility Identification Number 0061969; LOCATION: Lamesa, Dawson County, Texas; TYPE OF FACILITY: automotive maintenance shop; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to submit the UST registration and self-certification form and make available a valid, current delivery certificate; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(22) COMPANY: Magic Valley Roofing & Construction Company, Incorporated; DOCKET NUMBER: 2002-1058-MSW-E; IDENTIFIER: Enforcement Identification Number 18404; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: roofing and construction company; RULE VIOLATED: 30 TAC §330.5 and §330.32(b), by failing to prevent the transporting and disposal of municipal solid waste at an unauthorized facility; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: Mildred Independent School District; DOCKET NUMBER: 2001-1073- MWD-E; IDENTIFIER: Water Quality Permit Number 11646-001; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), and (9)(A), Water Quality Permit Number 11646-001, Agreed Order Number 1999-0950-MWD-E, and the Code, §26.121, by failing to maintain and operate the treatment facility in order to achieve optimum efficiency of treatment capability, design and manage irrigation practices, provide equipment to determine the irrigation application rates and maintain accurate records of the volume of the wastewater, enclose the holding pond to prevent public contact with the facility, achieve compliance with both the biochemical oxygen demand and total suspended solids, maintain a minimum chlorine residual of one milligram per liter, and provide oral and written reports of any noncompliance issue; and the Code, §26.027(c), by failing to obtain authorization prior to the construction of the new wastewater treatment facility; PENALTY: $30,625; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: North Orange Water and Sewer, LLC; DOCKET NUMBER: 2002-0766- MWD-E; IDENTIFIER: TPDES Permit Number 11589-001; LOCATION: Orange, Orange County, Texas; TYPE

OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1), (4), and (5), 317.4(a)(8) and (b)(4), 317.6(b)(1)(D) and (E), and 319.11(c), TPDES Permit Number 11589-001, and the Code, §26.121, by failing to properly operate and maintain all systems of collection, treatment, and disposal, prevent unauthorized discharges, properly house the chlorination facilities, provide the chlorination facilities with an on-site self-contained breathing apparatus, properly cover and control liquids from the bar screenings disposal bucket, provide the potable water wash down line with a hose bib vacuum breaker, ensure all measurements are accurately accomplished, and report effluent violations which deviate from the permitted effluent limitations by more than 40%; and 30 TAC §319.302(b)(3), by failing to notify the appropriate local government officials and the local media when a 200,000 gallon bypass was reported; PENALTY: $14,375; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Oak Ridge Water Supply Corporation; DOCKET NUMBER: 2002-0675- PWS-E; IDENTIFIER: PWS Number 0160013; LOCATION: Johnson City, Blanco County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(N), by failing to install a flow measuring device; 30 TAC §290.46(f)(3)(A) and (t), by failing to maintain a daily record of water works operations and maintenance and failing to display an emergency telephone number on the facility's sign; 30 TAC §290.43(d)(9), by installing more than three pressure tanks at one location without obtaining approval; 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two or more service pumps; 30 TAC §290.109(c) and THSC, §341.033(d), by failing to collect samples for analysis of microbial contaminants; and 30 TAC §290.42(i), by failing to use a brand of disinfect that was approved by the American National Standards Institute/National Sanitation Foundation; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(26) COMPANY: Darryl Winstead and Marjorie Winstead dba San Gabriel Water Works and Indian Springs Water Works; DOCKET NUMBER: 2002-0920-PWS-E; IDENTIFIER: PWS Numbers 2460046 and 2270210; LOCATION: Austin, Williamson and Travis Counties, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(e) (now 30 TAC §290.117(e)(2)), by failing to conduct reduced tap monitoring sampling for lead and copper; PENALTY: $626; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339- 2929.

(27) COMPANY: San Miguel Electric Cooperative, Inc.; DOCKET NUMBER: 2002-0999- AIR-E; IDENTIFIER: Air Account Number AG-0007-G and Air Permit Number 4180A; LOCATION: Christine, Atascosa County, Texas; TYPE OF FACILITY: electric power generating; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §101.20(1) and 40 CFR §60.7(c) and (d), by failing to include information on all opacity excursions and the percentage of operating time that excess opacity emissions had occurred; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: J. Cleo Thompson & James Cleo Thompson, Jr., L.P.; DOCKET NUMBER: 2002-1043-AIR-E; IDENTIFIER: Air Account Number CZ-0035-V; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.145(2)(B), §122.146(2), and THSC, §382.085(b), by failing to submit the annual Title V compliance certification; 30 TAC §122.504(a)(4)(A) and THSC, §382.085(b), by failing to submit an update general operating permit application; and 30 TAC §106.512(1) and THSC, §382.085(b), by failing to register the Waukesh 7042 compressor engine within 10 days after construction began; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(29) COMPANY: Triangle Station, Inc.; DOCKET NUMBER: 2002-0438-PST-E; IDENTIFIER: PST Facility Identification Number 57896; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted and make available to a common carrier a valid, current delivery certificate; PENALTY: $19,600; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: James W. Tucker, Jeff S. Tucker, Rebecca S. Tucker and Crossroads Environmental Corporation; DOCKET NUMBER: 2002-0683-UIC-E; IDENTIFIER: Waste Disposal Well Permit Number 315; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: commercial and non-hazardous waste disposal; RULE VIOLATED: 30 TAC §37.21, by failing to provide financial assurance mechanisms ; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Varco, L.P. dba Tuboscope Vetco International, Inc.; DOCKET NUMBER: 2002-0497-AIR-E; IDENTIFIER: Air Account Number HG-0878-I; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: surface coating; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 7171, and THSC, §382.085(b), by failing to operate emission point number LCX-6 within the permitted maximum allowable emission rate of 5.931 pounds per hour of volatile organic compounds and keep accurate records of operation time and emission rates; 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit deviation reports; PENALTY: $6,600; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Wood Processing Services Inc.; DOCKET NUMBER: 2002-0866-MSW-E; IDENTIFIER: Industrial Hazardous Waste Identification Number F1332; LOCATION: Venus, Johnson County, Texas; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §330.4, by failing to obtain authorization prior to accepting or storing municipal solid waste; 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent outdoor burning; and 30 TAC §330.5, by failing to store waste in a manner that prevents the threat of endangerment to human health and the environment; PENALTY: $8,800; ENFORCEMENT COORDINATOR: Alayne Furgurson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Zarmin Enterprises, Inc. dba Minute Mart; DOCKET NUMBER: 2002-0071- PST-E; IDENTIFIER: PST Facility Identification Number 57597; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to successfully perform an annual

pressure decay test; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS; and 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain a copy of the initial system test results; PENALTY: $600; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200207532
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 19, 2002

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that David Dewhurst, Commissioner of the General Land Office, approved a coastal boundary survey, submitted by Nedra J. Foster conducted August 30, 2002, locating the following shoreline boundary:

Survey of a portion of Pelican Island in Galveston Bay adjacent to the Texas A&M Research Center on Pelican Island, Galveston County, Sketch No. 14, known as Pelican Island next to the City of Galveston in Galveston Bay.

For a copy of this survey or more information on this matter, contact Ben Thomson, Director of the Survey Division, Texas General Land Office by phone at 512-463-5212, email ben.thomson@glo.state.tx.us, or fax 512-463-5098.

TRD-200207569
Larry Soward
Chief Clerk
General Land Office
Filed: November 20, 2002

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Cardiology Associates of Houston PA	L05608	Houston	00	11/05/02

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Northwest Texas Healthcare System Inc	L02054	Amarillo	68	11/06/02
Austin	Seton Medical Center	L02896	Austin	66	11/12/02
Austin	Austin Cardiovascular Associates	L05172	Austin	08	11/12/02
Austin	South Austin Cancer Center	L05108	Austin	05	11/14/02
Carthage	East Texas Medical Center Carthage	L02540	Carthage	28	11/13/02
Channelview	Enpro Systems Incorporated	L04990	Channelview	08	11/08/02
College Station	College Station Hospital LP	L02559	College Station	45	11/06/02
Corpus Christi	Spohn Health System Corporation	L00265	Corpus Christi	75	11/01/02
Dallas	Mallinckrodt Inc	L03580	Dallas	44	11/14/02
El Paso	Tenet Hospitals Limited	L02365	El Paso	39	11/14/02
Fannin	Central Power and Light Company	L02519	Fannin	14	11/14/02
Fort Worth	Radiology Associates	L03953	Fort Worth	27	11/11/02
Houston	Texas Nuclear Imaging Inc	L05009	Houston	19	11/04/02
Houston	The Methodist Hospital	L00457	Houston	107	10/31/02
Houston	Metracom USA LLC	L05544	Houston	02	11/06/02
Houston	Baylor College of Medicine	L00680	Houston	78	11/07/02
Lubbock	University Medical Center	L04719	Lubbock	53	11/13/02
McAllen	Valley Heart Consultants	L05330	McAllen	02	11/05/02
Mesquite	HMA Mesquite Hospitals Inc	L02428	Mesquite	31	11/07/02
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	15	11/07/02
San Angelo	Shannon Clinic	L04216	San Angelo	24	11/01/02
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	34	11/04/02
San Antonio	Baptist Health System	L00455	San Antonio	111	10/31/02
San Antonio	University of Texas at San Antonio	L01962	San Antonio	46	10/30/02
San Antonio	The University of Texas Health Science Center at San Antonio	L05556	San Antonio	02	11/01/02
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	118	11/05/02
San Antonio	Radiology Associates of San Antonio PA	L05358	San Antonio	10	11/07/02
San Antonio	Baptist Health System	L00455	San Antonio	112	11/05/02
San Antonio	Andrew J Cottingham Jr MD	L04282	San Antonio	04	11/14/02
Throughout Tx	Savage-Tolk Corporation	L02672	Amarillo	18	11/07/02
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	72	11/08/02
Throughout Tx	Alliance Imaging Inc	L05336	Dallas	02	11/07/02
Throughout Tx	Halliburton Energy Services Inc	L02113	Houston	100	11/07/02
Throughout Tx	Cooperheat-MQS Inc	L00087	Houston	99	11/15/02
Throughout Tx	Petroleum Industry Inspectors	L04081	Houston	77	11/14/02

CONT. AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	H & G Inspection Company Inc	L02181	Houston	156	11/14/02
Throughout Tx	Ruiz Testing Services Inc	L04948	San Antonio	09	11/12/02
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	11	11/14/02
Throughout Tx	H & H X-Ray Services Inc	L02516	Tyler	37	11/14/02

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
La Porte	Atofina Petrochemicals Inc	L04640	La Porte	11	11/06/02
Pasadena	Pasadena Paper Company	L00906	Pasadena	39	11/08/02
Throughout Tx	Austin Bridge & Road LP	L04629	Dallas	12	11/08/02
Throughout Tx	Shell Oil Products US	L04554	Deer Park	18	11/06/02

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Baylor University Medical Center	L03989	Dallas	21	10/31/02
Houston	Cytogentix Inc	L05422	Houston	01	11/13/02

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Brownsville	Brownsville Medical Center	L01526	Brownsville		11/06/02

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health, Bureau of Radiation Control, (department) has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200207537

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 19, 2002

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Texas Higher Education Coordinating Board

Request for Proposals for the Texas Fund for Geography Education

The Texas Higher Education Coordinating Board is releasing this Request for Proposal to the Texas Fund for Geography Grant Program. To be eligible for an award, institutions must submit applications to the Texas Fund for Geography Education Advisory Committee as specified in these instructions. Proposals must be submitted in writing and electronically.

Program Overview:

Name: Texas Fund for Geography Education

Purpose: To provide funding to eligible institutions of higher education to support geography education within the state and to improve geography literacy in the K-12 environment.

Authority: Texas Education Code, 61.944- 61.945; Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter J, Rules 13.180-13.187. See appendices.

Eligible Projects: New or existing initiatives to support projects to improve the quality of geography education in both public and independent institutions of higher education in Texas, and to promote a better understanding of Texas by its residents.

General Selection Criteria: Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based primarily on project quality, cost, and impact the project will have on enhancing geography education in the K-12 environment.

Available Funds: $50,000 for FY 2003.

Grant Award: Minimum: none. Maximum: Not to exceed $50,000.

Grant Period: One-year grants from April 15, 2003 (tentative date of award contracts) to December 31, 2003.

Grant Disbursement: In a single payment, as soon as possible after the awards are made.

Carryover Funds: Unencumbered funds may not carry over beyond the grant period unless specifically authorized by the Committee.

Application Deadline: Applications must be postmarked (or otherwise dated for overnight delivery) by January 15, 2003, or hand-delivered to the Committee's office by 5:00 p.m., January 15, 2003. Applications must also be received electronically by 5:00 p.m., January 15, 2003. E-mail applications to: jeffrey.phelps@thecb.state.tx.us

More Information: Contact Mr. Jeffrey Phelps, Director of Finance, Finance, Campus Planning and Research Division, at 512/427-6139, or by e-mail.

Program Schedule:

January 15, 2003: Proposals are due.

March 1, 2003: Recommendations are made to the National Geographic Society.

April 1, 2003: Proposals are awarded.

April 5, 2003: Award letters are sent.

April 15, 2003: Grantee institutions sign award contracts.

Electronic copies of these instructions and forms can be found at the Committee's website at http://www.thecb.state.tx.us/reports/html/0488.htm.

TRD-200207534
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: November 19, 2002

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Texas Department of Housing and Community Affairs

Public Hearing for Weatherization Assistance Program for Low-Income Persons 2003 State Plan/Application

The Texas Department of Housing and Community Affairs (TDHCA) announces that a public hearing will be held to receive comments on draft 2003 program year state plan for the Texas Weatherization Assistance Program for Low-Income Persons. Texas anticipates level funding for program year 2003. This plan will use the U. S. Department of Energy's estimated funding figure for planning purposes only.

The public hearing will be held at 2:00 p.m. on Friday, December 13, 2002 in Room 1-100 of the Travis Building, 1701 North Congress Avenue, Austin, Texas. At the hearing, a representative from TDHCA will provide descriptions of the Weatherization Assistance Program (WAP) changes and the proposed use of the United States Department of Energy funds for the program year 2003, which will be for the period of April 1, 2003 to March 31, 2004.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the program year 2003 Texas Weatherization Assistance Program State Plan and Application. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on Friday, December 13, 2002, to Ms. Lolly Caballero, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 600, Austin, Texas 78701 or by electronic mail to lcaballe@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed state plan may be requested by calling Ms. Caballero at (512) 475-0471 or by writing Ms. Caballero at the TDHCA address given above. The proposed draft amendment to the plan will be available December 2, 2002. It can also be obtained from TDHCA's Internet Web Site at the following address, under the Energy Assistance Programs Section: www.tdhca.state.tx.us.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200207564
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 20, 2002

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Texas Department of Insurance

Notice of Request for Recommendations Regarding Changes to the Residential Property Insurance Benchmark Rates

Texas Insurance Code Article 5.101 §3(d) requires the Texas Department of Insurance (Department) to conduct hearing annually to determine the benchmark rates for residential property insurance. Before each benchmark rate hearing, the Commissioner is required to request recommendations from insurers, trade associations, the public

insurance counsel and any other interested person or entity regarding changes to the benchmark rates.

All submissions of recommendations are required to include supporting actuarial analyses. All exhibits supporting the recommendations, including the underlying workpapers, should be submitted in both paper and electronic format. Six paper copies of each submission should be submitted. The electronic format should be 3.5 inch high density diskette in a DOS or Windows spreadsheet or other format readable by a machine running DOS or Windows. Parameters, assumptions and references to underlying data should be identifiable in the electronic exhibits. In order to be considered by the Department in developing a proposed rule to amend the existing benchmark rates, all submissions must be filed with the Chief Clerk of the Texas Department of Insurance by January 10, 2003.

Relevant data collected by the Department is available on CD and may be obtained by sending a request for the "Residential Property Benchmark Rate Hearing Data" to:

Texas Department of Insurance

Attention: Gary Gola (MC 105-5S)

P.O. Box 149104

Austin, Texas 78714-9104

Requests may also be faxed to 512-463-6122 or e-mailed to gary.gola@tdi.state.tx.us. All requests should include a contact name, the name of the organization, and a mailing address.

TRD-200207566
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 20, 2002

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Notice of Request for Recommendations Regarding Changes to the Voluntary Private Passenger and Commercial Automobile Insurance Benchmark Rates

Texas Insurance Code Article 5.101 §3(d) requires the Texas Department of Insurance (Department) to conduct a hearing annually to determine the benchmark rates for voluntary private passenger and commercial automobile insurance. Before each benchmark rate hearing, the Commissioner is required to request recommendations from insurers, trade associations, the public insurance counsel and any other interested person or entity regarding changes to the benchmark rates.

All submissions of recommendations are required to include supporting actuarial analyses. All exhibits supporting the recommendations, including the underlying workpapers, should be submitted in both paper and electronic format. Six paper copies of each submission should be submitted. The electronic format should be 3.5 inch high density diskette in a DOS or Windows spreadsheet or other format readable by a machine running DOS or Windows. Parameters, assumptions and references to underlying data should be identifiable in the electronic exhibits. In order to be considered by the Department in developing a proposed rule to amend the existing benchmark rates, all submissions must be filed with the Chief Clerk of the Texas Department of Insurance by January 10, 2003.

Relevant data collected by the Department is available on CD and may be obtained by sending a request for the "Automobile Benchmark Rate Hearing Data" to:

Texas Department of Insurance

Attention: Gary Gola (MC 105-5S)

P.O. Box 149104

Austin, Texas 78714-9104

Requests may also be faxed to 512-463-6122 or e-mailed to gary.gola@tdi.state.tx.us. All requests should include a contact name, the name of the organization, and a mailing address.

TRD-200207567
Gene C. Jarmon
Acting General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 20, 2002

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Texas Lottery Commission

Instant Game No. 332 "50 Grand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 332 is "50 GRAND". The play style in Game 1 is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 332 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 332.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000, $50,000, 50 G SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1 GAME NO. 332 - 1.2D

Figure 1: GAME NO. 332 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	THTH
24	TWFR
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
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY

$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU
50 G SYMBOL	WIN

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section. Figure 2 GAME NO. 332 - 1.2E

Figure 2: GAME NO. 332 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $500.

I. High-Tier Prize - A prize of $1,000, $5,000, $50,000.

J. Bar Code - A 22 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 thirteen (13) digit number consisting of the three (3) digit game number (332), 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: 332-0000001-000.

L. Pack - A pack of "50 GRAND" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "50 GRAND" Instant Game No. 332 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 "50 GRAND" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) play symbols. If the player matches any of the YOUR NUMBERS to any of the WINNING NUMBERS, the player will win the prize shown for that number. If the player gets a 50 G symbol, the player will win $50,000. 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 43 (forty-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, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 43 (forty-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 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 43 (forty-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 3 or more like non-winning prize symbols.

C. No duplicate non-winning Your Number play symbols.

D. No duplicate Winning Number play symbols.

E. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The "50 G" symbol and the $50,000 prize symbol will always appear together and will only appear on intended winners according to the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "50 GRAND" 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 2.3.C of these Game Procedures.

B. To claim a "50 GRAND" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "50 GRAND" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "50 GRAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "50 GRAND" 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. 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.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. 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 5,132,400 tickets in the Instant Game No. 332. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3 GAME NO. 332- 4.0

Figure 3: GAME NO. 332 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	1,026,337	5.00
$10	342,304	14.99
$15	136,893	37.49
$20	119,698	42.88
$50	42,789	119.95
$100	8,220	624.38
$500	473	10,850.74
$1,000	172	29,839.53
$5,000	11	466,581.82
$50,000	5	1,026,480.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.06. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 332 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. 332, 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-200207558
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 19, 2002

♦ ♦ ♦

Instant Game No. 333 "Winning in 3's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 333 is "WINNING IN 3'S". The play style in Game 1 is "key number match with tripler". The play style in Game 2 is "key symbol with tripler". The play style in Game 3 is "match three with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 333 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 333.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000, $3,000, $30,000, HORSESHOE SYMBOL, STAR SYMBOL, DOLLAR BILL SYMBOL, CLOVER SYMBOL, DIAMOND SYMBOL, POT OF GOLD SYMBOL, TOP HAT SYMBOL, GOLD BAR SYMBOL, COIN SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, MONEY BAG SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1 GAME NO. 333 - 1.2D

Figure 1: GAME NO. 333 - 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
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU
STAR SYMBOL	TRP
HORSESHOE SYMBOL	TRP
DOLLAR BILL SYMBOL	DOLLAR
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
POT OF GOLD SYMBOL	POTGLD
TOP HAT SYMBOL	TPHAT
GOLD BAR SYMBOL	GOLD
COIN SYMBOL	COIN
STACK OF BILLS SYMBOL	STACK
DOLLAR SIGN SYMBOL	MONEY
MONEY BAG SYMBOL	TRP

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are: Table 2 of this section.

Figure 2 GAME NO. 333 - 1.2E

Figure 2: GAME NO. 333 - 1.2E

CODE	PRIZE
THR	$3.00
FOR	$4.00
SVN	$7.00
NIN	$9.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $4.00, $7.00, $9.00, $10.00, $15.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100.

I. High-Tier Prize - A prize of $1,000, $3,000, $30,000.

J. Bar Code - A 22 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 thirteen (13) digit number consisting of the three (3) digit game number (333), 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: 333-0000001-000.

L. Pack - A pack of "WINNING IN 3'S" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of ticket 124.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WINNING IN 3'S" Instant Game No. 333 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 "WINNING IN 3'S" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) play symbols. In the first game, if the player matches any of the YOUR NUMBERS to the WINNING NUMBER, the player will win the prize shown for that number. If the player gets a horseshoe symbol, the player will win triple the prize shown. In the second game, if the player gets 3 like symbols, the player will win the prize shown. If the player gets 2 like symbols and a star symbol, the player will win triple that amount. In the third game, if the player gets 3 like amounts, the player will win that amount. If the player gets 2 like amounts and a money bag symbol, the player will win triple that amount. 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 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) 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 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 30 (thirty) 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. The tripler symbol will only appear on intended winners as dictated by the prize structure.

C. Although not all prize symbols can be won in each game, they may appear in all possible prize locations as a non-winning symbol.

D. Game 1: No duplicate non-winning Your Number play symbols.

E. Game 1: No duplicate non-winning prize symbols.

F. Game 1: There will be no correlation between the Your Numbers play symbols and the prize symbols.

G. Game 2: No 4 or more like symbols.

H. Game 2: No game which contains a tripler symbol will contain more than 2 like symbols.

I. Game 2: No 2 or more pairs of like play symbols on a ticket.

J. Game 3: No 4 or more like amounts.

K. Game 3: No game which contains a tripler symbol will contain more than 2 like amounts.

L. Game 3: No 2 or more pairs of like play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "WINNING IN 3'S" Instant Game prize of $3.00, $4.00, $7.00, $9.00, $10.00, $15.00, $20.00, $50.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, or $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 2.3.C of these Game Procedures.

B. To claim a "WINNING IN 3'S" Instant Game prize of $1,000, $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WINNING IN 3'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WINNING IN 3'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WINNING IN 3'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. 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.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,108,625 tickets in the Instant Game No. 333. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3 GAME NO. 333- 4.0

Figure 3: GAME NO. 333 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	879,699	6.94
$4	146,688	41.64
$7	97,789	62.47
$9	97,645	62.56
$10	73,389	83.24
$15	97,738	62.50
$20	73,260	83.38
$50	48,869	125.00
$100	6,495	940.51
$1,000	150	40,724.17
$3,000	9	678,736.11
$30,000	6	1,018,104.17

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.01. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 333 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. 333, 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-200207559
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 19, 2002

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Instant Game No. 336 "HOLIDAY MILLION"

1.0 Name and Style of Game.

A. The name of Instant Game No. 336 is "HOLIDAY MILLION". The play style in Game 1 is "match 3 with doubler". The play style in Game

2 "key symbol match with auto win". The play style in Game 3 is "key symbol match with doubler and tripler". The play style in Game 4 is "beat score". The play style in Game 5 "key symbol match with auto win". The play style in Game 6 is "add up". The play style in Game 7 is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 336 shall be $20.00 per ticket.

1.2 Definitions in Instant Game No. 336.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, $500, $1,000, $5,000, $ONE MILL, COOKIE SYMBOL, BOOT SYMBOL, CANDY SYMBOL, HOLLY SYMBOL, WREATH SYMBOL, SACK SYMBOL, HORN SYMBOL, SANTA SYMBOL, TREE SYMBOL, MITTENS SYMBOL, STRING OF LIGHTS SYMBOL, ANGEL SYMBOL, CANDY CANE SYMBOL, SCARF SYMBOL, COAT SYMBOL, FIRE LOGS SYMBOL, GOLD BAR SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, CANDLE SYMBOL, EAR MUFFS SYMBOL, SLEIGH SYMBOL, BELLS SYMBOL, STAR SYMBOL, DEER SYMBOL, SNOWFLAKE SYMBOL, CAP SYMBOL, SNOWMAN SYMBOL, STOCKING SYMBOL, JINGLE BELL SYMBOL, DRUM SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1 GAME NO. 336 - 1.2D

Figure 1: GAME NO. 336 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$5,000	FIV THOU
$1,000,000	ONE MILL
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
COOKIE SYMBOL	DBL
BOOT SYMBOL	BOOT
CANDY SYMBOL	CANDY
HOLLY SYMBOL	HOLLY
WREATH SYMBOL	WREATH
SACK SYMBOL	SACK
HORN SYMBOL	AUTO
SANTA SYMBOL	DBLE
TREE SYMBOL	TRPL
MITTENS SYMBOL	MTTNS
STRING OF LIGHTS SYMBOL	LIGHTS
ANGEL SYMBOL	ANGEL
CANDY CANE SYMBOL	CANE
SCARF SYMBOL	SCARF
COAT SYMBOL	COAT
FIRE LOGS SYMBOL	FIRE
GOLD BAR SYMBOL	GOLD
STACK OF BILLS SYMBOL	BILLS

DOLLAR SIGN SYMBOL	DOLLAR
CANDLE SYMBOL	CNDLE
EAR MUFFS SYMBOL	MUFFS
SLEIGH SYMBOL	SLEIGH
BELLS SYMBOL	BELLS
STAR SYMBOL	STAR
DEER SYMBOL	DEER
SNOWFLAKE SYMBOL	SNOW
CAP SYMBOL	CAP
SNOWMAN SYMBOL	SNWMN
STOCKING SYMBOL	STCKNG
JINGLE BELL SYMBOL	JNGLE
DRUM SYMBOL	DBL

Figure 2 GAME NO. 336 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 336 - 1.2E

CODE	PRIZE
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $20.00.

H. Mid-Tier Prize - A prize of $40.00, $70.00, $100, $200, $350, $500.

I. High-Tier Prize - $5,000, $1,000,000.

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 (336), 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: 336-0000001-000.

L. Pack - A pack of "HOLIDAY MILLION" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate from pack to pack. Fanfold A: ticket front 000 will be the top ticket and 074 back will be on the last page. Fanfold B: ticket back 000 will be on the top and ticket front 074 will be on the last page.

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 MILLION" Instant Game No. 336 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 MILLION" Instant Game is determined once the latex on the ticket is scratched off to expose 59 (fifty-nine) play symbols. In Game 1, if the player gets 3 like amounts, the player will win that amount. If the player gets 2 like amounts plus a cookie symbol, the player will win double that amount. In Game 2, if the player finds 2 like symbols, the player will win $40 instantly. In Game 3, if the player finds a horn symbol in any spot, the player will win the prize shown below that symbol. If the player gets a santa symbol, the player will win double that prize. If the player gets a tree symbol, the player will win triple that prize. In Game 4, if the player's YOUR NUMBER is higher than THEIR NUMBER within a game, the player will win the prize shown. In Game 5, if the player gets a candle symbol, the player will win $20 automatically. In Game 6, the player must scratch the bells. The player must then count up the star symbols found and win the prize in the legend. In Game 7, if the player matches any of the YOUR NUMBERS to any WINNING NUMBER, the player will win the prize shown for that number. If the player gets a drum symbol, the player will win double that prize 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 59 (fifty-nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 59 (fifty-nine) 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 59 (fifty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 59 (fifty-nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Although not all prizes can be won in each game, all prize symbol may be used in non-winning locations.

C. Game 1: No four or more of a kind.

D. Game 1: No more than 2 pair of like play symbols on a ticket.

E. Game 1: The "cookie" doubler symbol will only appear on intended winners according to the prize structure.

F. Game 3: The "horn", "santa" and "tree" symbols will appear according to the prize structure.

G. Game 3: No duplicate non-winning play symbols.

H. Game 3: No duplicate non-winning prize symbols.

I. Game 4: No duplicate non-winning rows.

J. Game 4: No ties between Your Score and Their Score in a row.

K. Game 4: No duplicate non-winning prize symbols.

L. Game 6: No duplicate non-winning play symbols.

M. Game 6: The "star" symbol will only appear on intended winners according to the prize structure.

N. Game 7: No duplicate non-winning prize symbols.

O. Game 7: No duplicate non-winning YOUR NUMBER play symbols.

P. Game 7: No duplicate WINNING NUMBERS.

Q. Game 7: No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

R. Non-winning prize symbols will never be the same as the winning prize symbol(s).

S. Game 7: The "drum" symbol will appear according to the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY MILLION" Instant Game prize of $20.00, $40.00, $70.00, $100, $200, $350, 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, $70.00, $100, $200, $350, 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 "HOLIDAY MILLION" Instant Game prize of $5,000 or $1,000,000, 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 MILLION" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOLIDAY MILLION" 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 MILLION" 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. 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.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,093,100 tickets in the Instant Game No. 336. The approximate number and value of prizes in the game are as follows:

Figure 3 GAME NO. 336- 4.0

Figure 3: GAME NO. 336 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	1,222,344	4.17
$40.00	237,647	21.43
$70.00	169,781	30.00
$100	84,898	59.99
$200	26,381	193.06
$350	8,081	630.26
$500	5,642	902.71
$5,000	200	25,465.50
$1,000,000	5	1,018,620.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.90. 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. 336 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. 336, 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: November 15, 2002

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Instant Game No. 360 "DOG GONE LUCKY"

1.0 Name and Style of Game.

A. The name of Instant Game No. 360 is "DOG GONE LUCKY". The play style is "match 3 of 9".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 360 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 360.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $50.00, $100, $200, $2,000, PAW PRINT SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1 GAME NO. 360 - 1.2D

Figure 1: GAME NO. 360 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$2,000	TWO THOU
PAW PRINT SYMBOL	PAW

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2 GAME NO. 360 - 1.2E

Figure 2: GAME NO. 360 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $200.

I. High-Tier Prize - A prize of $2,000.

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 (360), 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: 360-0000001-000.

L. Pack - A pack of "DOG GONE LUCKY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000-004 will be on the top page, tickets 005-009 will be on the next page and so forth with tickets 245-249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOG GONE LUCKY" Instant Game No. 360 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 "DOG GONE LUCKY" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If the player matches three (3) like amounts, the player will win that amount. If the player matches two (2) like amounts and a paw print symbol, the player will win double that amount. 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 nine (9) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly nine (9) 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 nine (9) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the nine (9) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No ticket will have four (4) or more like play symbols on a ticket.

C. The Doubler Symbol will never appear on a ticket which contains three (3) like Play symbols.

D. No more than one (1) Doubler Symbol on a ticket.

E. No more than one pair of like play symbols will appear on a ticket containing a Doubler Symbol.

F. No more than two pairs of like play symbols will appear on a ticket which does not contain a Doubler Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOG GONE LUCKY" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $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 $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 2.3.C of these Game Procedures.

B. To claim a "DOG GONE LUCKY" Instant Game prize of $2,000, 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 "DOG GONE LUCKY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DOG GONE LUCKY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DOG GONE LUCKY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. 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.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. 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 12,018,500 tickets in the Instant Game No. 360. The approximate number and value of prizes in the game are as follows:

Figure 3 GAME NO. 360- 4.0

Figure 3: GAME NO. 360 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1.00	1,297,982	9.26
$2.00	961,480	12.50
$4.00	288,386	41.68
$8.00	96,189	124.95
$10.00	24,062	499.48
$20.00	36,039	333.49
$50.00	17,545	685.01
$100	896	13,413.50
$200	479	25,090.81
$2,000	13	924,500.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.41. 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. 360 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. 360, 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-200207480
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 15, 2002

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, January 8, 2003, 2002, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Alfred Cortez, Jr. dba A & A Set-Up Specialist to hear alleged violations of Section 7(d) of the Act and Section 80.123(e) of the Rules by installing a home without obtaining, maintaining, or possessing a valid installer's license. SOAH 332-03-0956. Department MHD2002000919-UI, MHD2002000991-UI, and MHD2002001096-UI.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200207568
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: November 20, 2002

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 31, 2002 issue of the *Texas Register* (27 TexReg 4854). The selected consultant will conduct a thoroughfare assessment program in the Dallas-Fort Worth Metropolitan Area.

The consultant selected for this project is Kimley-Horn and Associates, Inc., 12700 Park Central Drive, Suite 1800, Dallas, Texas 75251. The maximum amount of this contract is $4,199,763. Work on this project is scheduled to begin in November 2002, and all work will be completed by May 2005.

Issued in Arlington, Texas on November 11, 2002.

TRD-200207563
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 20, 2002

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Texas Department of Public Safety

Public Hearing Notice Concerning §13.2 - Controlled Substances/General Provisions

The Texas Department of Public Safety in accordance with Administrative Procedure and Texas Register Act, Texas Government Code, §2001, et seq., is holding a public hearing on December 11, 2002, at 1:00 p.m. at the Texas Department of Public Safety Criminal Law Enforcement Building (Building E), in the Narcotics Regulatory Conference Room, 6100 Guadalupe Street, Austin, Texas 78773. Visitor parking is available, but limited, in the department parking lot.

The purpose of the hearing is to receive comments from all interested persons regarding adoption of amendments to Administrative Rule §13.2, concerning Controlled Substances/General Provisions, proposed for adoption under the authority of Health and Safety Code, §481.003. The proposed rule was published in the October 11, 2002, issue of the *Texas Register* (27 TexReg 9545).

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. This correspondence should be addressed to Linda Schaefer, Manager, Narcotics Regulatory Programs, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0439, or by fax at (512) 424- 5799.

Individual comments may be limited to five minutes in duration, depending upon the number of attendees.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, Braille, are requested to contact Linda Schaefer at (512) 424- 2458, three work days prior to the meeting so that appropriate arrangements can be made.

TRD-200207533
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: November 19, 2002

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Public Utility Commission of Texas

Notice of Amendment to Interconnection Agreement

On November 12, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Navigator Telecommunications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26929. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26929. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26929.

TRD-200207427
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

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Notice of Amendment to Interconnection Agreement

On November 12, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Birch Telecom of Texas Ltd., LLP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26924. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26924. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26924.

TRD-200207428
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

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Notice of Amendment to Interconnection Agreement

On November 12, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Spruce Communications, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA)

and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26925. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26925. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26925.

TRD-200207429
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

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Notice of Amendment to Interconnection Agreement

On November 12, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and NTS Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26926. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26926. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26926.

TRD-200207430
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

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Notice of Amendment to Interconnection Agreement

On November 12, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and SBC Advanced Solutions, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26927. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26927. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26927.

TRD-200207431
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

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Notice of Amendment to Interconnection Agreement

On November 12, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Talk.com Holding Corp., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26928. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26928. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 12, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26928.

TRD-200207432

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 13, 2002

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Notice of Amendment to Interconnection Agreement

On November 14, 2002, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Metropolitan Telecommunications of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 26946. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26946. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 17, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888- 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26946.

TRD-200207520
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2002

♦ ♦ ♦

Notice of Amendment to Interconnection Agreement

On November 18, 2002, Lipan Telephone Company, Inc. and Texas Am-Tel I, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supp. 2002) (PURA). The joint application has been designated Docket Number 26961. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 26961. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 17, 2002, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to the commission's Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of

Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 26961.

TRD-200207562
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2002

♦ ♦ ♦

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 November 12, 2002, for retail electric provider (REP) certification, pursuant to §§39.101- 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of New Mexico Natural Gas, Inc. for Retail Electric Provider (REP) certification, Docket Number 26931 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 December 6, 2002. 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 26931.

TRD-200207452
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2002

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Notice of Application for Amendment to Certificated Service Area Boundary in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 18, 2002, for an amendment to a certificated service area boundary in Cameron County, Texas.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville to Amend Certificated Service Area Boundaries. Docket Number 26959.

The Application: The Brownsville Public Utilities Board (BPUB) filed an application to amend its certificated service area boundary in Brownsville, Cameron County, Texas. BPUB applied for a minor boundary change in order to provide electrical, sewer, and water service to the site of the new Brownsville Independent School District Middle School to be located on 21.76 acres north of Tejon Road. The Brownsville Independent Middle School District has requested electric service to this area. This area is not developed at this time and is owned solely by Brownsville Independent School District. No other property owners will be affected by this service. There is an existing Central Power & Light (CP&L) electric line along FM 3248, also known as Alton Gloor Highway, near the property. BPUB is proposing to extend an overhead distribution line northeast along FM 3248 approximately 14,000 feet to serve this property. This area consists of 21.76 acres of land out of the northwestern part of Flor de Mayo Tract, Share 15, Espiritu Grant, Cameron County, Texas, which will be developed by the Brownsville Independent School District as a Middle School. The area for the site of the Brownsville Independent School District Middle School is singly certificated to CP&L.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 26959.

TRD-200207561
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2002

♦ ♦ ♦

Notice of Application for an Amendment to a Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 1, 2002, to amend a certificate of convenience and necessity for a minor boundary change in Taylor County, Texas.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. doing business as Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity in Taylor County. Docket Number 26885

The Application: Southwestern Bell Telephone L.P. doing business as Southwestern Bell Telephone Company (SWBT) filed an application to realign the boundary between SWBT's Abilene exchange and Taylor Telephone Cooperative's Potosi exchange in Taylor County. In the application, SWBT stated that the minor boundary change amendment will allow customers in a new subdivision to be efficiently served by a single dominant certificated telecommunications utility (DCTU). SWBT's proposed revision will transfer six lots of the Red Bluffs Estates subdivision into Taylor's service area. The majority of this subdivision is located in Taylor's serving area. SWBT stated it currently has no facilities or customers in this area.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll- free) 1-800-735-2989. All comments should reference Docket Number 26885.

TRD-200207453
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2002

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Notice of Application for Relinquishment of its Service Provider Certificate of Operating Authority

On November 15, 2002, Golden Harbor of Texas, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60037. Applicant intends to relinquish its certificate.

The Application: Application of Golden Harbor of Texas, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 26947.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 5, 2002. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 26947.

TRD-200207560
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2002

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Texas Racing Commission

Cancellation of Public Hearing

In the November 1, 2002 issue of the *Texas Register*, (27 TexReg 10499), the Texas Racing Commission published notice of a public hearing on the pending application by El Primero Fair Association, Inc. for a Class 3 pari-mutuel racetrack license. El Primero has withdrawn its application for a license and therefore, this case will be dismissed from the docket of the State Office of Administrative Hearings and the hearing previously scheduled to begin on December 10, 2002 has been cancelled.

Questions regarding this matter should be directed to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, 512-833-6699, FAX 512-833-6907.

TRD-200207472
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Filed: November 15, 2002

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from consulting firms to provide analysis, evaluation and recommendations for the Bus Operations within the Department of Parking, Traffic and Transportation Services.

Information may be obtained by contacting:

Rex Janne Director of Purchasing Services Texas A&M University P.O. Box 30013 College Station, Texas 77842-0013 or e-mail at r-janne@tamu.edu.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Proposals must be received on or before 2:00 p.m., December 18, 2002.

TRD-200207521
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: November 18, 2002

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Texas Department of Transportation

Request for Qualifications for Engineering Services - Aviation Division

The Airport Sponsors listed, through their agent, the Texas Department of Transportation (TxDOT), intend to engage aviation professional engineering firms for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive qualifications for professional engineering design services as described in the project scope for the projects listed.

Airport Sponsor: City of Fort Worth, Fort Worth Spinks Airport. TxDOT CSJ No.:0302SPINK Scope: Provide engineering/design services: to expand apron and install medium intensity taxiway lights; overlay and mark runway 17R-35L, overlay taxiway B; overlay cross TW's; and construct replacement hangar access TW. Project Manager: Alan Schmidt.

Airport Sponsor: City of Clarendon, Clarendon Municipal Airport. TxDOT CSJ No.:030325CLNDN Scope: Provide engineering/design services to reconstruct, rehabilitate, and mark RW 1-19; rehabilitate turnarounds RW 1-19; rehabilitate and mark stub taxiways, reconstruct hangar access taxiway; rehabilitate apron; grade embankments in primary surface; install signage and erosion/sedimentation controls. Project Manager: Alan Schmidt.

Interested firms shall utilize the Form 439, titled "Aviation Engineering Services Questionnaire" (August 2000 version). The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address

http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm

Download the file from the selection "Engineer Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word, Version 7, document).

Two completed, unfolded copies of Form 439 (August 2000 version), for each project of interest to the engineer must be postmarked by U. S. Mail by midnight December 12, 2002. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on December 13, 2002; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 13, 2002; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

E-MAIL DELIVERY OPTION Your form 439 may be emailed to TxDOT, at email address

AVNRFQ@dot.state.tx.us

Emails must be received by 4:00 p.m. December 12, 2002. Received times will be determined by the marked time and date as the email is received into the TxDOT network system. Please allow sufficient time

to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return email. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before emailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and not change the formatting or information contained on the form following receipt. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

Each airport sponsor's duly appointed committee will review all professional qualifications and may select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantage Business Enterprise (DBE) participation or Historically Underutilized Business (HUB) participation, design schedule, and other project matters, prior to the final selection process.

The final engineer selection by the sponsor's committee will generally be made following the completion of review of Request for Qualification statements/proposals and/or engineer interviews. Each airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated project manager, Alan Schmidt, for technical questions at 1-800-68-PILOT (74568).

TRD-200207522
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 18, 2002

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University of Houston System

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System furnishes this notice of request for proposal. The University of Houston System seeks proposals from qualified consulting firms to provide advice and consultation to the Administration and Finance Committee and System Staff on matters related to assistance in the evaluation of the System's Treasury business processes with the goal of implementing best practices. Interested parties are invited to express their interest and describe their capabilities on or before January 2, 2003.

The term of the contract is to be for a one (1) year period beginning on or about April 1, 2003 and ending March 31, 2004, subject to one (1) year renewal option. Further technical information can be obtained from Raymond Bartlett at 713.743.8781. All proposals must be specific and must be responsive to the criteria set forth in this request.

GENERAL INSTRUCTIONS: Submit one (1) original and two (2) copies of your proposal in a sealed envelope to: University of Houston, Attention: Purchasing Department, 325 McElhinney Hall, Houston, Texas 77204-5015 before 4:00 P.M. January 2, 2003.

SCOPE OF WORK: The Consultant will (i) Perform an evaluation of the System's Treasury business processes with the goal of implementing "best practices" to reduce the cost of cash management and depository services, improve internal efficiency through the better utilization of treasury management services and technology, reduce manual and/or redundant internal processes, and improve control measures. Areas of specific focus should include, but are not necessarily limited to, general Treasury operations, cash management processes, bank relationship structure, account analysis fees, merchant credit card processing, and credit card fees, (ii) Develop a draft report of all current business processes in the Treasurer's Office with recommendations and timetables for improvements to such things as treasury operations and cash management practices, bank relationship structure, account analysis fees (including an estimate of the fee savings to be realized), and the credit card merchant processing program. The recommendations should focus on improving efficiency, utilizing additional technology, and control measures based on "best practices". The report shall include a section that provides recommendations with timetables for a series of iterative steps that could be implemented by the System over time that would lead to the use of "best practices" in the event resource limitations preclude the System from changing its business processes to "best practices" processes immediately, (iii) Review the draft report of findings, recommendations, and time lines with System staff, and (iv) Submit a final report of findings, recommendations, and time lines after discussion with System staff. TERMINATION: This Request for Proposal (RFP) in no manner obligates the University of Houston System to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston System and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston System reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200207525
Dona G. Hamilton
VC/VP for Legal Affairs and General Counsel
University of Houston System
Filed: November 18, 2002

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Texas Workforce Commission

Notice of Public Hearing Regarding Amendments to 40 TAC Chapter 807 Proprietary School Rules

The Texas Workforce Commission (Commission) is amending select rules that concern the regulation of Proprietary Schools and will hold a Public Hearing to receive comments from the public on the proposed amendments beginning at:

*1:00 p.m. on

*December 17, 2002

*Room 244, 101 East 15th Street

*Austin, TX 78778

A draft of the proposed amendments is published concurrently in this issue (November 29, 2002) of the *Texas Register*. A hard copy of the proposed amendments may be requested by contacting Michael De Long at (512) 936-3104. An electronic copy is also available on the Commission's website: **www.twc.state.tx.us** or **www.texasworkforce.org**. From this site, go to **http://www.twc.state.tx.us/twcinfo/rules/prorules.html**. If you should require special accommodations, please contact John Moore, Assistant General Counsel, Texas Workforce Commission at (512) 463-2238 or via facsimile (512) 463-1426.

TRD-200207523
John Moore
Assistant General Counsel
Texas Workforce Commission
Filed: November 18, 2002

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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