Texas Register

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0757-GA

Requestor:

The Honorable E. Bruce Curry

216th Judicial District Attorney

521 Earl Garrett Street

Kerrville, Texas 78028

Re: Whether carpet and tile may be purchased by a municipal police department using asset forfeiture funds under chapter 59 of the Code of Criminal Procedure (RQ-0757-GA)

Briefs requested by December 15, 2008

RQ-0758-GA

Requestor:

The Honorable Don McLeroy, Chair

State Board of Education

1701 North Congress Avenue

Austin, Texas 78701

Re: Calculation of the "total return on all investment assets of the permanent school fund" for purposes of article VII, section 5(a)(2), Texas Constitution (RQ-0758-GA)

Briefs requested by December 18, 2008

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

TRD-200806045
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 19, 2008

Opinions

Opinion No. GA-0679

Mr. Brian S. Rawson, Executive Director

Texas Department of Information Resources

Post Office Box 13564

Austin, Texas 78711-3564

Re: Construction of a conflict of interest statute, Government Code section 2054.022(a)(7), which prohibits a board member or executive director of the Department of Information Resources from accepting or receiving "money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded" (RQ-0706-GA)

SUMMARY

Government Code section 2054.022(a)(7) prohibits a board member or the executive director of the Department of Information Resources from receiving money or a thing of value, by rebate, gift, or otherwise, from an individual, firm, or corporation when there is a practical possibility that such entity will be awarded a contract by the department or by a state agency that is subject to the review, oversight, or reporting responsibilities of the department or its board. Whether a specific conveyance is prohibited by subsection (a)(7) will depend on the particular circumstances, a determination to be made in the first instance by the individual members and the executive director.

Opinion No. GA-0680

Mr. Mike Geeslin

Commissioner of Insurance

Texas Department of Insurance

Post Office Box 149104

Austin, Texas 78714-9104

Re: Whether the Texas Department of Insurance may access criminal history record information that is subject to a nondisclosure order under Government Code section 411.081(d) (RQ-0713-GA)

SUMMARY

Presuming that the Texas Department of Insurance is not a criminal justice agency for purposes of Government Code section 411.081(d), the Department may not access criminal history record information that is subject to a nondisclosure court order under that section because the Department is not listed in subsection (i) among the entities to which such information may be disclosed.

Opinion No. GA-0681

The Honorable Elton R. Mathis

Waller County Criminal District Attorney

846 Sixth Street, Suite #1

Hempstead, Texas 77445

Re: Whether the Waller County Appraisal District Office must be physically located within the boundaries of Waller County (RQ-0715-GA)

S U M M A R Y

Under Tax Code section 6.05, an appraisal district's office must be located within the county for which the district is established, unless (1) the office is a branch office or (2) the appraisal district has entered an interlocal contract with an appraisal office in another district to perform appraisal duties for the district. In the absence of either of these two exceptions, the Waller County Appraisal District's primary office must be located in Waller County. Until the primary office is located in Waller County, the Appraisal District will not comply with section 6.05.

Opinion No. GA-0682

The Honorable Beverly Woolley

Chair, Committee on Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Meaning of "administrative costs" for purposes of section 352.1015(c), Tax Code, relating to the expenditures of revenue from the hotel occupancy tax (RQ-0714-GA)

S U M M A R Y

Tax Code section 352.1015(c) allows hotel occupancy tax revenue to be expended for administrative costs only if they are incurred directly for the promotion and servicing expenditures authorized by the provision applicable to the particular county, and the expenditure is otherwise consistent with chapter 352 of the Code. Whether expenditures for "key person insurance" premiums constitute an authorized administrative cost is for the commissioners court to determine in the first instance, subject to judicial review.

Opinion No. GA-0683

The Honorable John W. Segrest

McLennan County Criminal District Attorney

219 North Sixth Street, Suite 200

Waco, Texas 76701

Re:Whether a county commissioners court may establish an electronic monitoring program under Code of Criminal Procedure article 42.035(b) (RQ-0718-GA)

S U M M A R Y

Texas Code of Criminal Procedure article 42.035 does not authorize a county commissioners court to establish an electronic monitoring program separate from that established by a community supervision and corrections department.

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

TRD-200806044
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 19, 2008

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER P. APPEAL PROCEDURES FOR THE FOOD AND NUTRITION PROGRAMS

DIVISION 1. APPEAL PROCEDURES FOR THE CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

4 TAC §§1.1000 - 1.1004

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter P, Division 1, §§1.1000 - 1.1004, concerning the procedures for appealing the department's action affecting the participation in the department's Child and Adult Care Food Program (CACFP). The new division is proposed to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §226.6 and to provide for standardized procedures for appealing the department's actions affecting the participation in the CACFP. The department, in a separate submission, is proposing the repeal of Chapter 25, Subchapter A, Division 20, which includes the existing appeal rules for the CACFP.

New §1.1000 provides definitions to be used in the subchapter. New §1.1001 provides requirements for request for administrative review concerning institutions, responsible principals and responsible individuals and sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures, and combined reviews, and states the effect of agency action. Proposed new subsection (c)(6) makes a hearing optional and requires that a request for a hearing be included in the written request for administrative review if the appellant prefers a hearing. A failure to request a hearing in a timely manner will result in a hearing not being provided, unless the Administrative Review Official conducting the review determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. Currently, in appeals brought under the Child and Adult Care Food Program, a hearing is automatically provided upon receipt by TDA of a request for administrative review. This change is being made to make these rules consistent with federal guidelines, that require that a hearing be requested, if desired, and to provide requesting entities with a choice of requesting a hearing or not. TDA's experience thus far in processing appeals has shown that in some cases requesting parties would rather not have a hearing due to cost of travel to Austin and other factors, but did not know they had an option to have their appeal be determined on the record (i.e. without a hearing). New §1.1002 provides requirements for an abbreviated administrative review. New §1.1003 provides requirements for a suspension review. New §1.1004 provides requirements for request for administrative review concerning day care homes and sets forth requirements regarding what actions are and are not subject to administrative review, and appeal procedures.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Ms. Hibbs also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal process in place for all of the department's Food and Nutrition programs. The new sections will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with these new sections because they impose no new requirements that result in a cost to appellants. In addition, because the proposed new sections have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the CACFP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.1000. Definitions.

In addition to the definitions set out in 7 Code of Federal Regulations (CFR) §226.2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative review--The fair hearing provided upon request to:

(A) an institution that has been given notice by TDA of any action or proposed action that will affect their participation or reimbursement under the Program.

(B) a principal or individual responsible for an institution's serious deficiency after the responsible principal or responsible individual has been given a notice of intent to disqualify them from the Program; and

(C) a day care home that has been given a notice of proposed termination for cause.

(2) Administrative review official (ARO)--The independent and impartial official who conducts the administrative review held in accordance with 7 CFR §226.6(k). The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. Although the ARO may be an employee of TDA, he/she shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The institution and the responsible principals and responsible individuals shall be permitted to contact the ARO directly if they so desire.

(3) Appellant--An institution, day care home, responsible principal or responsible individual, who requests an administrative review.

(4) CFR--The Code of Federal Regulations.

(5) FNS--The Food and Nutrition Service of the U.S. Department of Agriculture.

(6) Institution--A sponsoring organization, child care center, at-risk after-school care center, outside-school-hours care center, emergency shelter or adult day care center which enters into an agreement with TDA to assume final administrative and financial responsibility for Program operations.

(7) Notice--A letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by TDA or FNS with regard to an institution's Program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home's participation. The notice shall specify the action being proposed or taken and the basis for the action, and is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is sent by certified mail, return receipt (or the equivalent private delivery service), it is considered to be received by the institution, responsible principal or responsible individual, or day care home five (5) days after being sent to the addressee's last known mailing address.

(8) Principal--Any individual who holds a management position within, or is an officer of, an institution or a sponsored center, including all members of the institution's board of directors or the sponsored center's board of directors.

(9) Program--The Child and Adult Care Food Program authorized by §17 of the National School Lunch Act, as amended.

(10) Responsible principal or responsible individual--

(A) a principal, whether compensated or uncompensated, who TDA or FNS determines to be responsible for an institution's serious deficiency;

(B) any other individual employed by, or under contract with, an institution or sponsored center, who TDA or FNS determines to be responsible for an institution's serious deficiency; or

(C) an uncompensated individual who TDA or FNS determines to be responsible for an institution's serious deficiency.

(11) Sponsoring organization--A public or nonprofit private organization that is entirely responsible for the administration of the food program in:

(A) one or more day care homes;

(B) a child care center, emergency shelter, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(C) two or more child care centers, emergency shelters, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(D) any combination of child care centers, emergency shelters, at-risk afterschool care centers, outside school hours care centers, adult day care centers, and day care homes. The term "sponsoring organization" also includes an organization that is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers or outside-school-hours care centers, which meet the definition of For-profit center in 7 CFR §226.2 and are part of the same legal entity as the sponsoring organization.

(12) Suspension review--The review provided, upon the institution's request, to an institution that has been given a notice of intent to suspend participation (including Program payments), based on a determination that the institution has knowingly submitted a false or fraudulent claim.

(13) TDA--The Texas Department of Agriculture.

§1.1001. Requests for Administrative Review Concerning Institutions, Responsible Principals and Responsible Individuals.

(a) Actions subject to administrative review. The following actions are subject to an administrative review.

(1) Application denial. Denial of a new or renewing institution's application for participation;

(2) Denial of sponsored facility application. Denial of an application submitted by a sponsoring organization on behalf of a facility.

(3) Notice of proposed termination. Proposed termination of an institution's agreement.

(4) Notice of proposed disqualification of a responsible principal or responsible individual. Proposed disqualification of a responsible principal or responsible individual.

(5) Suspension of participation. Suspension of an institution's participation in the Program.

(6) Start-up or expansion funds denial. Denial of an institution's application for start-up or expansion payments.

(7) Advance denial. Denial of a request for an advance payment.

(8) Recovery of advances. Recovery of all or part of an advance in excess of the claim for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(9) Claim denial. Denial of all or a part of an institution's claim for reimbursement.

(10) Claim deadline exceptions and requests for upward adjustments to a claim. Decision by TDA not to forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim.

(11) Overpayment demand. Demand for the remittance of an overpayment.

(12) Other actions. Any other action of TDA affecting an institution's participation or its claim for reimbursement.

(b) Actions not subject to administrative review. The following actions are not subject to administrative review.

(1) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim. A decision by FNS to deny an exception request by an institution for payment of a late claim, or for an upward adjustment to a claim.

(2) Determination of serious deficiency. A determination that an institution is seriously deficient;

(3) Disqualification and placement on TDA list and National Disqualified List. Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the TDA list and the National Disqualified List.

(4) Termination. Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by another state agency or FNS.

(c) Appeal Procedures. Except as described in §1.1002 of this title (relating to Abbreviated Administrative Review), which sets forth the circumstances under which an abbreviated administrative review is held and §1.1003 of this title (relating to Suspension Review), which sets forth the circumstances under which a suspension review is held, the following procedures shall apply when an institution, a responsible principal or responsible individual appeals any action subject to administrative review as described in subsection (a) of this section.

(1) Notice of action. The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, shall be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action.

(2) Request for administrative review (Appeal). The request for administrative review shall be submitted in writing not later than fifteen (15) days after the date the notice of action is received. The request for administrative review (appeal) shall also clearly identify the action being appealed, and include a photocopy of the notice of action. TDA shall acknowledge the receipt of the request for an administrative review within ten (10) days of its receipt of the request.

(3) Representation. The institution and the responsible principals and responsible individuals may represent themselves, retain legal counsel, or may be represented by another person.

(4) Review of record. Any information on which TDA's action was based shall be available to the institution and the responsible principals and responsible individuals for inspection from the date of receipt of the request for an administrative review.

(5) Opposition. The institution and the responsible principals and responsible individuals may refute the findings contained in the notice of action in person or by submitting written documentation to the ARO. In order to be considered, written documentation shall be submitted to the ARO not later than thirty (30) days after receipt of the notice of action.

(6) Hearing. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information only if the institution or the responsible principals and responsible individuals request a hearing in the written request for an administrative review, unless the ARO determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. The rules and procedures for an administrative hearing for appeals under this subchapter are found in §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(7) Basis for decision. The ARO shall make a determination based solely on the information provided by TDA, the institution, and the responsible principals and responsible individuals, and based on federal and state laws, regulations, policies, and procedures governing the Program.

(8) Time for issuing a decision. Within sixty (60) days of TDA's receipt of the request for an administrative review, the ARO shall inform TDA, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the administrative review's outcome. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(9) Final decision. The determination made by the ARO is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

(10) Record of result of administrative reviews. TDA shall maintain searchable records of all administrative reviews and their disposition for three (3) years.

(d) Combined administrative reviews for responsible principals and responsible individuals. The administrative review of the proposed disqualification of the responsible principals and responsible individuals shall be combined with the administrative review of the application denial, proposed termination, and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the ARO's discretion, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

(e) Effect of state agency action. TDA's action shall remain in effect during the administrative review. The effect of this requirement on particular state agency actions is as follows.

(1) Overpayment demand. During the period of the administrative review, TDA is prohibited from taking action to collect or offset the overpayment. However, TDA shall assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the ARO overturns TDA's action.

(2) Recovery of advances. During the administrative review, TDA shall continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(3) Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution are governed by 7 CFR §§226.6(c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

§1.1002. Abbreviated Administrative Review.

The administrative review shall be limited to a review of written submissions concerning the accuracy of TDA's determination if the appli-

cation was denied or TDA proposes to terminate the institution's agreement because:

(1) the information submitted on the application was false;

(2) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;

(3) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

(4) the institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

§1.1003. Suspension Review.

The following are requirements for a suspension review.

(1) Notice of Suspension. The institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, shall be given notice of the proposed suspension action being taken (including all Program payments) unless the institution requests a review of the proposed suspension. The notice must also specify:

(A) that TDA is proposing to suspend the institution's participation;

(B) that the proposed suspension is based on the institution's submission of a false or fraudulent claim, as described in the serious deficiency notice;

(C) the effective date of the suspension (which may be no earlier than ten (10) days after the institution receives the suspension notice);

(D) the name, address and telephone number of the suspension review official who will conduct the suspension review; and

(E) that if the institution wishes to have a suspension review, it must request a review and submit to the ARO written documentation opposing the proposed suspension within ten (10) days of the institution's receipt of the notice.

(2) Request for suspension review. The request for suspension review shall be submitted in writing not later than ten (10) days after the date the notice is received and must include written documentation opposing the proposed suspension. TDA shall acknowledge the receipt of the request within five (5) days of its receipt of the request.

(3) Hearing. No hearing shall be provided. The suspension review shall be limited to a review of written submissions concerning TDA's proposal to suspend the institution's participation.

(4) Basis for decision. The ARO shall make a determination based on a preponderance of the evidence provided by TDA, the institution, and the responsible principals and responsible individuals, and based on federal and according to laws, regulations, policies, and procedures governing the Program.

(5) Time for issuing a decision. Within ten (10) days of TDA's receipt of the request for the suspension review, the ARO shall inform TDA, the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the ARO's decision. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(6) Final decision. The determination made by the ARO is the final administrative determination to be afforded the institution and the responsible principals and responsible individuals.

(7) Record of result of administrative reviews. TDA shall maintain searchable records of all reviews and their disposition for three years.

§1.1004. Administrative Reviews for Day Care Homes.

(a) General. When a sponsoring organization proposes to terminate its Program agreement with a day care home for cause, the day care home shall be provided an opportunity for an administrative review of the proposed termination by requesting the sponsoring organization to offer an administrative review. The sponsoring organization shall develop procedures for offering and providing these administrative reviews. These procedures shall be consistent with this section and provided to each day care home when:

(1) the day care home enrolls in the Program, and

(2) the sponsoring organization takes an adverse action against the day care home provider.

(b) Actions subject to administrative review. The sponsoring organization shall offer an administrative review to a day care home that appeals a notice of intent to terminate their agreement for cause, a suspension of their participation, or for any other matter where TDA determines a review is necessary to provide due process to a day care home and requires such a review in program policy.

(c) Procedures. The following procedures shall apply when a day care home requests an administrative review of any action described in subsection (b) of this section.

(1) Uniformity. The same procedures shall apply to all day care homes.

(2) Representation. The day care home may retain legal counsel, or may be represented by another person.

(3) Review of record and opposition. The day care home may review the record on which the decision was based and refute the action in writing.

(4) Hearing. A hearing is not required.

(5) Review official. The review official shall be independent and impartial. Although the review official may be an employee or board member of the sponsoring organization, he/she shall not have been involved in the action that is the subject of the administrative review or have a direct personal or financial interest in the outcome of the administrative review;

(6) Basis for decision. The review official shall make a determination based on the information provided by the sponsoring organization and the day care home and on federal and state laws, regulations, polices, and procedures governing the Program.

(7) Time for issuing a decision. The review official shall inform the sponsoring organization and the day care home of the administrative review's outcome within sixty (60) days of the receipt of the request for an administrative. This timeframe is an administrative requirement for the sponsoring organization and may not be used as a basis for overturning the termination if a decision is not made within the specified timeframe.

(8) Final decision. The determination made by the review official is the final administrative determination to be afforded the day care home.

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 2. APPEAL PROCEDURES FOR THE SUMMER FOOD SERVICE PROGRAM (SFSP)

4 TAC §1.1010, §1.1011

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter P, Division 2, §1.1010 and §1.1011, concerning the procedures for appealing the department's action affecting the participation in the department's Summer Food Service Program (SFSP). The new division is proposed to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §225.13 and to provide for standardized procedures for appealing the department's actions affecting the participation in the SFSP.

The department, in a separate submission, is proposing the repeal of Chapter 25, Subchapter B, Division 14, which includes the existing appeal rules for the SFSP.

New §1.1010 provides definitions to be used in the subchapter. New §1.1011 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures, and states the effect of agency action. Proposed new subsection (c)(6) makes a hearing optional and requires that a request for a hearing be included in the written request for administrative review, if the appellant prefers a hearing. A failure to request a hearing in a timely manner will result in a hearing not being provided, unless the Administrative Review Official conducting the review determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. Currently, in appeals brought under the Summer Food Service Program, a hearing is automatically provided upon receipt by TDA of a request for administrative review. This change is being made to make rules consistent with federal guidelines, that require that a hearing be requested, to make all program appeals consistent, and to provide requesting entities with a choice of requesting a hearing or not. TDA's experience thus far in processing appeals has shown that in some cases requesting parties would rather not have a hearing due to cost of travel to Austin and other factors, but did not know they had an option to have their appeal be determined on the record (i.e. without a hearing).

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Ms. Hibbs also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal process in place for all of the department's Food and Nutrition programs. The new sections will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with these new sections because they impose no new requirements that will result in a cost to appellants. In addition, because the proposed new sections have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the SFSP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.1010. Definitions.

In addition to the definitions set out in 7 Code of Federal Regulation §225.2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative review--The fair review or hearing provided upon request to a sponsor or food service management company (FSMC) who has been given notice by the TDA of any action or proposed action that will affect their participation or reimbursement under the Program.

(2) Administrative review official (ARO)--The independent and impartial official who conducts the administrative review. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this subchapter. Although the ARO may be an employee of TDA, he/she shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The sponsor or FSMC shall be permitted to contact the ARO directly if they so desire.

(3) Appellant--A sponsor or food service management company (FSMC) who requests an administrative review.

(4) CFR--The Code of Federal Regulations.

(5) FNS--The Food and Nutrition Service of the U.S. Department of Agriculture.

(6) Food service management company (FSMC)--Means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in 7 CFR §225.15. Food service management companies may be:

(A) public agencies or entities;

(B) private, nonprofit organizations; or

(C) private, for-profit companies.

(7) Notice--A letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by TDA or FNS with regard to a sponsor or FSMC 's Program reimbursement or participation. The notice shall specify the action being proposed or taken and the basis for the action, and is considered to be received by the sponsor or FSMC when it is delivered, sent by facsimile, or sent by email. If the notice is sent by certified mail, return receipt (or the equivalent private delivery service), it is considered to be received by the sponsor or FSMC five (5) days after being sent to the addressee's last known mailing address.

(8) Principal--Any individual who holds a management position within, or is an officer of the sponsor or FSMC, including all members of the sponsor or FSMC 's board of directors.

(9) Program--The Summer Food Service Program authorized by the National School Lunch Act, as amended.

(10) Sponsor--A public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or state government, a public or private nonprofit college or university currently participating in the National Youth Sports Program (NYSP), administered by the National Collegiate Athletic Association, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program.

(11) TDA--The Texas Department of Agriculture.

§1.1011. Requests for Administrative Review.

(a) Actions subject to administrative review. The following actions are subject to an administrative review:

(1) denial of an application for participation;

(2) denial of a sponsor's request for an advance payment;

(3) denial of a sponsor's claim for reimbursement;

(4) TDA's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;

(5) claim against a sponsor for remittance of a payment;

(6) termination of the sponsor or a site;

(7) denial of a sponsor's application for a site;

(8) denial of an FSMC's application for registration, if applicable; or

(9) revocation of an FSMC's registration, if applicable.

(b) Actions not subject to administrative review. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under the provisions of 7 CFR §225.9(d)(5).

(c) Appeal Procedures. The following procedures shall apply when a sponsor or FSMC appeals any action subject to administrative review as described in subsection (a) of this section.

(1) Notice of action. The sponsor or FSMC shall be advised in writing of the grounds upon which TDA based the action. The notice of action shall be sent by certified mail, return receipt requested. The notice of action shall also state that:

(A) the sponsor or FSMC has the right to appeal TDA's action either in person or by filing written documentation with the review official; and

(B) the appeal must be made within ten (10) days from the date on which the notice of action is received.

(2) Request for administrative review (Appeal). The request for administrative review shall be submitted in writing not later than ten (10) days after the date the notice of action is received. The request for administrative review (appeal) shall also clearly identify the action being appealed, and include a photocopy of the notice of action. TDA must acknowledge the receipt of the request for an administrative review within five (5) days of its receipt of the request.

(3) Representation. The sponsor and FSMC may represent themselves, retain legal counsel, or may be represented by another person.

(4) Review of record. Any information on which TDA's action was based must be available to the sponsor or FSMC for inspection from the date of receipt of the request for an administrative review.

(5) Opposition. The sponsor or FSMC may refute the findings contained in the notice of action in person or by submitting written documentation to the ARO. In order to be considered, written documentation must be submitted to the ARO not later than seven (7) days after submitting the request for administrative review (appeal).

(6) Hearing. A hearing must be held by the ARO in addition to, or in lieu of, a review of written information only if the sponsor or FSMC requests a hearing in the written request for an administrative review unless the ARO determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with subsection (c)(5) of this section. The rules and procedures for an administrative hearing under this subchapter are found in §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(7) Basis for decision. The ARO must make a determination based solely on the information provided by TDA, the sponsor or FSMC, and based on federal and state laws, regulations, policies, and procedures governing the Program.

(8) Time for issuing a decision. Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is held, the ARO shall make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(9) Final decision. The determination made by the ARO is the final administrative determination to be afforded the sponsor or FSMC.

(d) Record of result of administrative reviews. TDA must maintain searchable records of all administrative reviews and their disposition for three years.

(e) Effect of State agency action. TDA's action remains in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning TDA's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if TDA's action is based on imminent dangers to the health or welfare

of children. If the sponsor or site has been terminated for this reason, TDA shall so specify in its notice of action.

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 3. APPEAL PROCEDURES FOR THE NATIONAL SCHOOL LUNCH PROGRAM (NSLP)

4 TAC §1.1020, §1.1021

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter P, Division 3, §1.1020 and §1.1021, concerning the procedures for appealing the department's action affecting the participation in the department's National School Lunch Program (NSLP). The new division is proposed to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §210.18 and to provide for standardized procedures for appealing the department's actions affecting the participation in the NSLP. The department, in a separate submission, is proposing the repeal of Chapter 25, Subchapter E, Division 9, which is the existing appeal rules for the NSLP.

New §1.1020 provides definitions to be used in the subchapter. New §1.1021 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures and states the effect of agency action.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Ms. Hibbs also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal process in place for all of the department's food and nutrition programs. The new sections will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the sections because they impose no new requirements that will result in a cost to appellants. In addition, because the proposed new sections have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the NSLP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.1020. Definitions.

In addition to the definitions set out in on 7 Code of Federal Regulation (CFR) §210.2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Review--The fair review or hearing provided upon request to a school food authority requesting a review of a denial of all or a part of a Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by TDA under 7 CFR §210.18. As used in this division, review does not mean the initial comprehensive on-site evaluation of school food authorities as defined in 7 CFR §210.18(b)(1).

(2) Administrative review official (ARO)--The independent and impartial official who conducts the review held in accordance with 7 CFR §210.18(q). The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this subchapter. Although the ARO may be an employee of TDA, he/she shall not have been involved in the action that is the subject of the review, or have a direct personal or financial interest in the outcome of the review. The school food authority shall be permitted to contact the ARO directly if they so desire.

(3) Appellant--A school food authority that requests a review.

(4) CFR--The Code of Federal Regulations.

(5) Day--A calendar day, including Saturday and Sunday.

(6) Fiscal action--The recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. Fiscal action also includes disallowance and withholding of funds for failure to take corrective action

(7) FNS--The Food and Nutrition Service of the U.S. Department of Agriculture.

(8) Notice of denial--A letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by TDA or FNS with regard to the denial of all or a part of a school food authority's Claim for Reimbursement or withholding its payment arising from administrative or follow-up review activity. The notice shall specify the action being proposed or taken and the basis for the action, and is considered to be received by the school food authority when it is delivered, sent by facsimile, or sent by email. If the notice is sent by certified mail, return receipt (or the equivalent private delivery service), it is considered to be received by a school food authority five (5) days after being sent to the addressee's last known mailing address.

(9) Program--The National School Lunch Program, authorized by the National School Lunch Act, as amended.

(10) School food authority--The governing body which is responsible for the administration of one or more schools; and has the

legal authority to operate the Program therein or be otherwise approved by FNS to operate the Program.

(11) TDA--The Texas Department of Agriculture.

§1.1021. Request for Administrative Review.

(a) Actions subject to review. Only the following fiscal actions are subject to an administrative review.

(1) Notice of denial. Denial of all or a part of the Claim for Reimbursement, which includes the recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed; and

(2) Withholding of payment. The withholding of payment based on the results of a comprehensive on-site evaluation or follow-up activity.

(b) Procedures for requesting an administrative review (appeal). The following procedures shall apply when a school food authority requests a review (appeals) of any action subject to review described in subsection (a) of this section.

(1) Notice of denial. The school food authority shall be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the school food authority may request a review of the action.

(2) Request for administrative review (appeal). The request for a review shall be submitted in writing and postmarked not later than fifteen (15) days after the date the notice of denial is received. The request for administrative review (appeal) shall also clearly identify the action being appealed, and include a photocopy of the notice of denial. TDA shall acknowledge the receipt of the request for an administrative review within ten (10) days of its receipt of the request.

(3) Representation. The school food authority may be represented by its designated official, retain legal counsel, or may be represented by another person.

(4) Review of record. Any information on which TDA's action was based shall be available to the school food authority for inspection from the date of receipt of the request for an administrative review.

(5) Opposition. The school food authority may refute the findings contained in the notice of denial in person or by submitting written documentation to the ARO. In order to be considered, written documentation shall be submitted to the ARO not later than thirty (30) days after receipt of the notice of denial.

(6) Hearing. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information only if the school food authority requests a hearing in the written request for a review, unless the ARO determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. The rules and procedures for a hearing for appeals under this subchapter are found in §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(7) Basis for decision. The ARO shall make a determination based on information provided by TDA and the appellant, and on Program regulations.

(8) Time for issuing a decision. Within sixty (60) days of TDA's receipt of the request for an administrative review, the ARO shall inform TDA and the appellant of the determination of the ARO. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(9) Final decision. The determination made by the ARO is the final administrative determination to be afforded the school food authority and shall take effect upon receipt of the written notice of the final decision by the school food authority.

(10) Record of result of reviews. TDA shall maintain searchable records of all reviews and their disposition for three (3) years from the date of the final decision.

(c) Effect of State Agency Action. TDA's action shall remain in effect during the appeal process.

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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DIVISION 4. APPEAL PROCEDURES FOR THE SCHOOL BREAKFAST PROGRAM (SBP)

4 TAC §1.1030, §1.1031

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter P, Division 4, §1.1030 and §1.1031, concerning the procedures for appealing the department's action affecting the participation in the department's School Breakfast Program (SBP). The new division is proposed to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §220.13 and to provide for standardized procedures for appealing the department's actions affecting the participation in the SBP. The department, in a separate submission, is proposing the repeal of Chapter 25, Subchapter D, Division 9, which is the existing appeal rules for the SBP.

New §1.1030 provides definitions to be used in the subchapter. New §1.1031 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures and states the effect of agency action.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections..

Ms. Hibbs also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal process in place for all of the department's food and nutrition programs. The new sections will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the amendment because they impose no new requirements that result in a cost to appellants. In addition, be-

cause the proposed new sections have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the SBP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.1030. Definitions.

In addition to the definitions set out in on 7 Code of Federal Regulation (CFR) Parts 210 and 220, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Review--The fair review or hearing provided upon request to a school food authority requesting a review of a denial of all or a part of a Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by TDA under 7 CFR §210.18. As used in this division, administrative review does not mean the initial comprehensive on-site evaluation of school food authorities as defined in 7 CFR §210.18(b)(1).

(2) Administrative review official (ARO)--The independent and impartial official who conducts the review held in accordance with 7 CFR §210.18(q). The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this subchapter. Although the ARO may be an employee of TDA, he/she shall not have been involved in the action that is the subject of the review, or have a direct personal or financial interest in the outcome of the review. The school food authority shall be permitted to contact the ARO directly if they so desire.

(3) Appellant--A school food authority that requests a review.

(4) CFR--The Code of Federal Regulations.

(5) Day--A calendar day, including Saturday and Sunday.

(6) Fiscal action--The recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. Fiscal action also includes disallowance and withholding of funds for failure to take corrective action

(7) FNS--The Food and Nutrition Service of the U.S. Department of Agriculture.

(8) Notice of denial--A letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by TDA or FNS with regard to the denial of all or a part of a school food authority's Claim for Reimbursement or withholding its payment arising from administrative or follow-up review activity. The notice shall specify the action being proposed or taken and the basis for the action, and is considered to be received by the school food authority when it is delivered, sent by facsimile, or sent by email. If the notice is sent by certified mail, return receipt (or the equivalent private delivery service), it is considered to be received by a school food authority five (5) days after being sent to the addressee's last known mailing address.

(9) Program--The School Breakfast Program (SBP), authorized by the Child Nutrition Act of 1966, as amended.

(10) School food authority--The governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein.

(11) TDA--The Texas Department of Agriculture.

§1.1031. Request for Administrative Review.

(a) Actions subject to administrative review. Only the following fiscal actions are subject to an administrative review.

(1) Notice of denial. Denial of all or a part of the Claim for Reimbursement, which includes the recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed; and

(2) Withholding of payment. The withholding of payment based on the results of a comprehensive on-site evaluation or follow-up activity.

(b) Procedures for requesting an administrative review (appeal). The following procedures shall apply when a school food authority requests an administrative review (appeal) of any action subject to review described in subsection (a) of this section.

(1) Notice of denial. The school food authority shall be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the school food authority may request a review of the action.

(2) Request for administrative review (appeal). The request for administrative review shall be submitted in writing and postmarked not later than fifteen (15) days after the date the notice of denial is received. The request for review (appeal) shall also clearly identify the action being appealed, and include a photocopy of the notice of denial. TDA shall acknowledge the receipt of the request for administrative review within ten (10) days of its receipt of the request.

(3) Representation. The school food authority may be represented by its designated official, retain legal counsel, or may be represented by another person.

(4) Review of record. Any information on which TDA's action was based shall be available to the school food authority for inspection from the date of receipt of the request for an administrative review.

(5) Opposition. The school food authority may refute the findings contained in the notice of denial in person or by submitting written documentation to the ARO. In order to be considered, written documentation shall be submitted to the ARO not later than thirty (30) days after receipt of the notice of denial.

(6) Hearing. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information only if the school food authority requests a hearing in the written request for a review, unless the ARO determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. The rules and procedures for a hearing for appeals under this subchapter are found in §§1.1050 - 1.1053 of this title (relating to Administrative

Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(7) Basis for decision. The ARO shall make a determination based on information provided by TDA and the appellant, and on Program regulations.

(8) Time for issuing a decision. Within sixty (60) days of TDA's receipt of the request for an administrative review, the ARO shall inform TDA and the appellant of the determination of the ARO. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(9) Final decision. The determination made by the ARO is the final administrative determination to be afforded the school food authority and shall take effect upon receipt of the written notice of the final decision by the school food authority.

(10) Record of result of reviews. TDA shall maintain searchable records of all reviews and their disposition for three years from the date of the final decision.

(c) Effect of State Agency Action. TDA's action shall remain in effect during the appeal process.

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 17, 2008.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 5. APPEAL PROCEDURES FOR THE SPECIAL MILK PROGRAM FOR CHILDREN (SMP)

4 TAC §1.1040, §1.1041

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter P, Division 5, §1.1040 and §1.1041, concerning the procedures for appealing the department's action affecting the participation in the department's Special Milk Program For Children (SMP). The new division is proposed to put into rule form and make some revisions to the appeal procedures to better conform to the requirements in 7 Code of Federal Regulation §215.11 and to provide for standardized procedures for appealing the department's actions affecting the participation in the SMP. The department, in a separate submission, is proposing the repeal of Chapter 25, Subchapter C, Division 9, which is the existing appeal rules for the SMP.

New §1.1040 provides definitions to be used in the subchapter. New §1.1041 sets forth requirements regarding what actions are and are not subject to administrative review, appeal procedures and states the effect of agency action.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Ms. Hibbs also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal process in place for all of the department's food and nutrition programs. The new sections will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the amendment because they impose no new requirements that will result in a cost to appellants. In addition, because the proposed new sections have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the SMP; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.1040. Definitions.

In addition to the definitions set out in on 7 Code of Federal Regulation (CFR) Parts 210 and 215, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Review--The fair review or hearing provided upon request to a school food authority requesting a review of a denial of all or a part of a Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by TDA under 7 CFR §210.18. As used in this division, review does not mean the initial comprehensive on-site evaluation of school food authorities as defined in 7 CFR §210.18(b)(1).

(2) Administrative review official (ARO)--The independent and impartial official who conducts the review held in accordance with 7 CFR §210.18(q). The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this subchapter. Although the ARO may be an employee of TDA, he/she shall not have been involved in the action that is the subject of the review, or have a direct personal or financial interest in the outcome of the review. The school food authority shall be permitted to contact the ARO directly if they so desire.

(3) Appellant--A school food authority that requests a review.

(4) CFR--The Code of Federal Regulations.

(5) Day--A calendar day, including Saturday and Sunday.

(6) Fiscal action--The recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. Fiscal

action also includes disallowance and withholding of funds for failure to take corrective action

(7) FNS--The Food and Nutrition Service of the U.S. Department of Agriculture.

(8) Notice of denial--A letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by TDA or FNS with regard to the denial of all or a part of a school food authority's Claim for Reimbursement or withholding its payment arising from administrative or follow-up review activity. The notice shall specify the action being proposed or taken and the basis for the action, and is considered to be received by the school food authority when it is delivered, sent by facsimile, or sent by email. If the notice is sent by certified mail, return receipt (or the equivalent private delivery service), and it is returned as undeliverable, it is considered to be received by a school food authority five (5) days after being sent to the addressee's last known mailing address.

(9) Program--The Special Milk Program, authorized by the Child Nutrition Act of 1966, as amended.

(10) School food authority--The governing body which is responsible for the administration of one or more schools and has the legal authority to operate the Program therein, or a nonprofit agency to which such governing body has designated authority for the operation of a milk program in school.

(11) TDA--The Texas Department of Agriculture.

§1.1041. Request for Administrative Review.

(a) Actions subject to an administrative review. Only the following fiscal actions are subject to an administrative review.

(1) Notice of denial. Denial of all or a part of the Claim for Reimbursement, which includes the recovery of overpayment through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, submission of a revised Claim for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed; and

(2) Withholding of payment. The withholding of payment based on the results of comprehensive on-site evaluation or follow-up activity.

(b) The following procedures shall apply when a school food authority requests an administrative review (appeals) of any action subject to review described in subsection (a) of this section.

(1) Notice of denial. The school food authority shall be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the school food authority may request an administrative review of the action.

(2) Request for administrative review (appeal). The request for a review shall be submitted in writing and postmarked not later than fifteen (15) days after the date the notice of denial is received. The request for administrative review (appeal) shall also clearly identify the action being appealed, and include a photocopy of the notice of denial. TDA shall acknowledge the receipt of the request for review within ten (10) days of its receipt of the request.

(3) Representation. The school food authority may be represented by its designated official, retain legal counsel, or may be represented by another person.

(4) Review of record. Any information on which TDA's action was based shall be available to the school food authority for inspection from the date of receipt of the request for an administrative review.

(5) Opposition. The school food authority may refute the findings contained in the notice of denial in person or by submitting written documentation to the ARO. In order to be considered, written documentation shall be submitted to the ARO not later than thirty (30) days after receipt of the notice of denial.

(6) Hearing. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information only if the school food authority requests a hearing in the written request for a review, unless the ARO determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. The rules and procedures for a hearing for appeals under this subchapter are found in §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(7) Basis for decision. The ARO shall make a determination based on information provided by TDA and the appellant, and on Program regulations.

(8) Time for issuing a decision. Within sixty (60) days of TDA's receipt of the request for an administrative review, the ARO shall inform TDA and the appellant of the determination of the ARO. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(9) Final decision. The determination made by the ARO is the final administrative determination to be afforded the school food authority and shall take effect upon receipt of the written notice of the final decision by the school food authority.

(10) Record of result of reviews. TDA shall maintain searchable records of all reviews and their disposition for three years from the date of the final decision.

(c) Effect of State Agency Action. TDA's action shall remain in effect during the appeal process.

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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DIVISION 6. ADMINISTRATIVE HEARING PROCEDURES FOR CONDUCTING THE APPEALS OF THE FOOD AND NUTRITION PROGRAMS

4 TAC §§1.1050 - 1.1053

The Texas Department of Agriculture (TDA) proposes new Chapter 1, Subchapter P, Division 6, §§1.1050 - 1.1053, concerning the procedures for hearing appeals of the department's action affecting the participation in the department's food and nutrition programs. The new division is proposed to put into rule form

and make some revisions to TDA's appeal hearing procedures to better conform to the requirements in 7 Code of Federal Regulation §§210.18, 215.11, 220.13, 225.13 and 226.6 and to provide for standardized procedures for hearing appeals of the department's actions affecting the participation in the food and nutrition programs.

New §1.1050 provides definitions to be used in the subchapter. New §1.1051 sets forth the purpose of the new rule. New §1.1052 sets forth the hearing procedures. New §1.1053 provides requirements for the standard of review and burden of proof for the hearing. Proposed new §1.1052 makes a hearing optional and requires that a request for a hearing be included in the written request for administrative review if the appellant prefers a hearing. A failure to request a hearing in a timely manner will result in a hearing not being provided, unless the Administrative Review Official (ARO) conducting the review determines that the failure to make a timely request was due to circumstances beyond the control of the appellant. Currently, in appeals brought under the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP), a hearing is automatically provided upon receipt by TDA of a request for administrative review. In appeals brought under the National School Lunch Program (NSLP), a hearing must be requested at the time an appeal is filed. This change is being made to make rules consistent with federal guidelines, that require that a hearing be requested, to make all program appeals consistent, and to provide requesting entities with a choice of requesting a hearing or not. TDA's experience thus far in processing appeals has shown that in some cases requesting parties would rather not have a hearing due to cost of travel to Austin and other factors, but did not know they had an option to have their appeal be determined on the record (i.e. without a hearing). Proposed new §1.1053 provides that the burden of proof in an appeal hearing be on TDA, rather than the appellant. Appeals brought under the CACFP currently use this standard, while other programs place the burden on the appellant. TDA is proposing that the burden be placed on TDA for all programs in order to ensure that program procedures are consistent and that the appellant and the ARO conducting the hearing are provided with a thorough understanding of the basis for the action being taken.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections.

Ms. Hibbs also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal hearing process in place for all of the department's food and nutrition programs. The new sections will not have a fiscal impact on microbusinesses, small businesses or individuals required to comply with the amendment because they impose no new requirements that will have a cost to appellants. In addition, because the proposed changes have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.1050. Definitions.

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

(1) Administrative review--A fair and impartial review provided by an independent and impartial official to review whether or not the department's actions were taken in accordance with a Program's laws, regulations, rules, policy guidance, and directives.

(2) Administrative Review Official (ARO)--The independent and impartial official who conducts the administrative review held in accordance with this division. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. Although the ARO may be an employee of TDA, he shall not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review.

(3) Appeal--A request for administrative review of an action taken by the department.

(4) Appellant--A participant in the TDA Food and Nutrition Programs who requests an appeal.

(5) Appellee--The Texas Department of Agriculture (TDA)

(6) Business day--A week day (Monday through Friday) that is not a federal or state holiday.

(7) Food and Nutrition Programs (Programs)--The food programs administered by the Food and Nutrition Division of TDA which include the Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), National School Lunch Program (NSLP), School Breakfast Program (SBP) Special Milk Program (SMP), and the Texas Public School Nutrition Policy (TPSNP).

(8) Hearing--An informal, adjudicative proceeding held before an impartial ARO to review whether or not the department's actions were taken in accordance with a Program's laws, regulations, rules, policy guidance, and directives.

(9) Notice--A letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by the department with regard to a claim for reimbursement or participation in the Programs.

(10) Party--Unless otherwise provided herein, a person, institution, organization or state agency named or admitted as a party.

(11) Representative--Any person who assists the appellant in presenting his case. An attorney, relative, friend, or other spokesman may serve as representative.

(12) TDA--The Texas Department of Agriculture.

§1.1051. Purpose.

The purpose of these rules is to provide for a simple and efficient system for conducting administrative hearings for the appeals of TDA's action affecting the participation in TDA's Food and Nutrition Programs. These rules are designed to supplement procedures established by the Code of Federal Regulations and shall be liberally construed, with a view towards the purpose for which they were adopted.

§1.1052. Hearing Procedures.

(a) Request for Hearing.

(1) Who may file. Except as described in §1.1002 of this title (relating to Abbreviated Administrative Review), and §1.1003 of this title (relating to Suspension Review), person who has received notice of action described in §1.1050(9) of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs) may file a request for a hearing.

(2) Time for filing. A person must request a hearing at the time he/she files a written appeal as described in §1.1050(3) of this title. If a person does not include a written hearing request in his appeal, he waives the right to a hearing and the case will be decided upon review of the documents in the record. The ARO shall deny a request for hearing filed after the appeal has been received by TDA, unless the ARO determines that the failure to make a timely request was due to circumstances beyond the control of the appellant.

(3) Form of request. The request for hearing must:

(A) be in writing,

(B) state the basis for the appeal of the adverse action; and

(C) include a legible copy of the notice of adverse action.

(b) Venue. All hearings shall be held in Austin, Texas, unless for good cause and in the public interest, another place of hearing is designated by the ARO.

(c) Notice of hearing. The notice of hearing shall be sent to the requesting party at least ten (10) days before the date of the hearing, except for the SFSP which shall be five (5) days. The hearing notice shall contain a statement of the date, time, and place where the hearing is to be held.

(d) Conduct of hearing.

(1) The ARO shall conduct the hearing as an informal proceeding. The formal rules of court shall not apply unless necessary for efficient conduct of the hearing.

(2) The ARO shall open the hearing and make a concise statement of its scope and purposes.

(3) The parties shall enter appearances.

(4) The parties or their representatives shall have the opportunity to:

(A) make opening statements;

(B) examine or request copies (at no cost) of all documents and records to be considered at the hearing;

(C) present the case personally or with the aid of others, including legal counsel;

(D) bring witnesses;

(E) present documentary evidence;

(F) question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(G) present arguments and make a closing statement. The appellant shall be entitled to open and close.

(5) The hearing is open to the public, but if space is limited, the ARO has the authority to limit the number of persons attending the hearing.

(6) Exclusion of witnesses. At the request of a party, or on the ARO's motion, the ARO may order witnesses excluded from the hearing so they cannot hear the testimony of other witnesses. This paragraph does not authorize exclusion of a party, a party's spouse, or a person who a party shows to be essential to the presentation of its case.

(7) The hearing shall be recorded either by a tape recorder or by a stenographer. The recording or stenographer's notes are kept on file for ninety (90) days after the hearing. During this period, the appellant may copy or transcribe this information at his or her own expense. In some cases, the ARO may use teleconference equipment. The use of this equipment does not change the conduct of the hearing or affect the rights of the parties. On the written request by a party, a court reporter may prepare a transcript of all or part of the proceedings. The party requesting the transcript shall pay the costs unless the parties agree to share the costs.

(e) Powers and Duties of the Administrative Review Officer (ARO).

(1) The ARO shall have the authority and the duty to:

(A) regulate pre-hearing matters and the hearing;

(B) conduct a full, fair, and impartial hearing;

(C) rule on any motions;

(D) administer oaths and affirmations;

(E) call and examine witnesses;

(F) receive evidence and rule upon the admissibility of the evidence;

(G) take action to avoid unnecessary delay in the disposition of the proceeding;

(H) maintain order, including regulating the conduct of the parties, authorized representatives, witnesses, observers, and other participants; and

(I) issue any order in the interest of justice or take other permissive action that is necessary for a fair, just, and proper hearing.

(2) The ARO has no authority to declare state or federal statutes, rules, or regulations invalid.

(f) Motions. Motions shall be filed in writing and served on all parties not less than seven (7) days before the hearing, except for good cause shown. Motions shall set forth the specific grounds for which the moving party seeks the relief requested, shall make reference to all similar motions filed in the proceeding, and shall state whether all parties agree with the relief requested. A non-moving party must file a response to the motion no later than five (5) days after receipt of the motion. The ARO shall state the decision on the record, or reserve ruling until after the hearing of the case. If a ruling on a motion is reserved until after the hearing of the case, the ruling shall be in writing and included in the final decision.

(g) Pre-hearing conference.

(1) On the motion of a party or on the ARO's own motion, the ARO may direct the parties to appear in person, by telephone, or by videoconference for a pre-hearing conference. The ARO may direct the parties, the parties' authorized representatives, or both, to appear at a prehearing conference to consider:

(A) motions and other preliminary matters relating to the proceeding, including discovery;

(B) settlement of the case or simplification of the issues;

(C) amendment or supplementation of pleadings;

(D) admissions or stipulations which will avoid the unnecessary introduction of evidence;

(E) limitations on the number of witnesses;

(F) time to be allotted to each party for presentation of its direct case or for cross-examination at the hearing;

(G) procedures to be followed at the hearing; and

(H) other matters that may aid in the disposition of the proceeding.

(2) A party seeking to participate in the prehearing conference by telephone must file a motion no later than seven (7) days before the hearing. The motion must state the reason for the request and contain the telephone number where the party or witness can be reached. A non-moving party must file a response to the motion no later than five (5) days after receipt of the motion. The ARO shall issue a written decision on the motion. If the motion is granted, the ARO may waive the making of a record of a pre-hearing conference and document the actions taken in a written order or in the final decision.

(h) Rules of Evidence. The parties are not bound by technical rules of evidence. Evidence will be admitted and given probative effect if it possesses probative value and is relevant as determined by the ARO.

(1) Documentary Evidence. Any documentary evidence to be considered shall be submitted not later than thirty (30) days from the date that appellant received notice. A party has the right to review, upon request, any documentary materials submitted to the ARO.

(A) Filing of documents. A party must file with the ARO all documents relating to any pending proceeding and must serve, at the same time, a copy on the other party.

(B) Service. Every document required to be served under these rules, may be served by any of the following methods to a party or its representative:

(i) hand-delivery;

(ii) courier-receipted delivery;

(iii) certified or registered mail; or

(iv) facsimile transmission. Service to the petitioner or its representative shall be made to the petitioner or representative's last known address or facsimile number as shown by TDA's records.

(C) Documents are considered filed only when received by the TDA's Hearings Clerk by 5:00 p.m. on a business day. A document received after 5:00 p.m. on a business day is considered filed on the next business day.

(D) Parties and their representatives shall immediately notify the ARO of any change in mailing address, telephone number, or facsimile number.

(E) When service is by mail, three (3) days shall be added to any time period in which service is to be accomplished.

(2) Stipulation to Facts. The parties to an appeal, with the consent of the ARO, may agree in writing to the facts involved. The ARO may decide the appeal based on such stipulation or, in the ARO's discretion, may take such further evidence as is deemed necessary for determining the appeal.

(3) Private Communications. Private (ex parte) communications of information, whether oral or written, about the substantive issues of the appeal are allowed only if the substance is shared with all parties to the appeal. The ARO shall provide all parties with the oral or written information.

(4) Confidential Information. Statutorily confidential information shall be protected in accordance with state and federal law.

§1.1053. Standard of Review.

The decision of the ARO shall be based on a preponderance of the evidence. The burden of proof shall be on TDA to show by a preponderance of the evidence that the action being appealed was taken in accordance with the Programs' laws, regulations, rules, policy guidance, and directives.

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

CHAPTER 25. SPECIAL NUTRITION PROGRAMS

The Texas Department of Agriculture (department) proposes the repeal of Chapter 25, Subchapter A, Division 20, §§25.511 - 25.520, relating to appeals under the Child and Adult Care Food Program; Subchapter B, Division 14, §§25.811 - 25.814, relating to appeals under the Summer Food Service Program; Subchapter C, Division 9, §25.1001 and §25.1002, relating to appeals under the Special Milk Program; Subchapter D, Division 9, §25.1201 and §25.1202, relating to appeals under the School Breakfast Program; and Subchapter E, Division 9, §§25.1411 - 25.1412, relating to appeals under the National School Lunch Program. The repeals are proposed so that the department may publish uniform appeal and hearing procedures for all food and nutrition programs. The repealed sections will be replaced by appeal and hearing procedures proposed to be included in Title 4, Chapter 1, Subchapter P, which includes general rules of practice for other TDA programs. The proposed new appeal and hearing procedures are published in the proposed rule section of this issue of the *Texas Register*.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five-year period the proposed repeals are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the repeals.

Ms. Hibbs also has determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing the new sections will be having appeal procedural policies in rule, and having a standard appeal hearing process in place for all of the department's food and nutrition programs. The proposed repeals will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with the repeals. In addition, because the proposed repeals have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

DIVISION 20. APPEALS

4 TAC §§25.511 - 25.520

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

The repeal of Chapter 25, Subchapter A, Division 20, §§25.511 - 25.520, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.511. How does DHS conduct contractor and day care home appeals?

§25.512. How does DHS conduct food service management company appeals?

§25.513. Who conducts appeals based on federal audits?

§25.514. How must participants appeal a contractor's denial of their eligibility for free and reduced-price meal benefits?

§25.515. Can a contractor appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim?

§25.516. How does a contractor request an appeal?

§25.517. Can a contractor appeal if USDA decides that a late claim is ineligible for payment?

§25.518. Who is responsible for creating appeal procedures for sponsored day care homes?

§25.519. When is a contractor required to provide a day care home with appeal procedures?

§25.520. What is an adverse action?

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 17, 2008.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 463-4075

SUBCHAPTER B. SUMMER FOOD SERVICE PROGRAM (SFSP)

DIVISION 14. APPEALS

4 TAC §§25.811 - 25.814

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

The repeal of Chapter 25, Subchapter B, Division 14, §§25.811 - 25.814, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.811. How does a sponsor or food service management company (FSMC) appeal an adverse action by DHS?

§25.812. When must a sponsor or food service management company (FSMC) submit an appeal?

§25.813. If DHS declines to forward a late claim to USDA for a determination of good cause, can a sponsor appeal this decision?

§25.814. Can a sponsor appeal a USDA decision that a late claim is ineligible for payment?

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER C. SPECIAL MILK PROGRAM (SMP)

DIVISION 9. APPEALS

4 TAC §25.1001, §25.1002

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

The repeal of Chapter 25, Subchapter C, Division 9, §25.1001 and §25.1002, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.1001. Does a contractor applying to participate in the SMP have the right to appeal the denial of its contract application?

§25.1002. Does a contractor participating in the SMP have the right to appeal any action that affects its continued participation in the SMP or affects its claim for reimbursement?

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

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SUBCHAPTER D. SCHOOL BREAKFAST PROGRAM (SBP)

DIVISION 9. APPEALS

4 TAC §25.1201, §25.1202

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

The repeal of Chapter 25, Subchapter D, Division 9, §25.1201 and §25.1202, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.1201. Does a contractor applying to participate in the SBP have the right to appeal the denial of its contract application?

§25.1202. Does a contractor participating in the SBP have the right to appeal any action that affects its continued participation in the SBP or affects its claim for reimbursement?

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

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SUBCHAPTER E. NATIONAL SCHOOL LUNCH PROGRAM (NSLP)

DIVISION 9. APPEALS

4 TAC §25.1411, §25.1412

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

The repeal of Chapter 25, Subchapter E, Division 9, §25.1411 and §25.1412, is proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer federal and state nutrition programs including the Child and Adult Care Food Program, the Summer Food Service Program, the National School Lunch Program, the School Breakfast Program and the Special Milk Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§25.1411. Does a contractor applying to participate in the NSLP have the right to appeal the denial of its contract application?

§25.1412. Does a contractor participating in the NSLP have the right to appeal any action that affects its continued participation in the NSLP or affects its claim for reimbursement?

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

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CHAPTER 26. FOOD AND NUTRITION DIVISION

SUBCHAPTER A. TEXAS PUBLIC SCHOOL NUTRITION POLICY

4 TAC §§26.1 - 26.9

The Texas Department of Agriculture (TDA) proposes new Chapter 26, Subchapter A, §§26.1 - 26.9, concerning the Texas Public School Nutrition Policy (TPSNP). The new sections are proposed to adopt by rule the existing TPSNP, in accordance with recommendations made by the Sunset Advisory Commission in its review of the Texas Department of Agriculture. Recognizing that our schools are in a powerful position to influence children and their eating habits, TDA established the TPSNP in 2004 in response to alarming data showing that Texas children were overweight or obese at a significantly higher rate than the nation as a whole. The TPSNP was created in collaboration with public, private and government entities representing the policy's stakeholders, including parents, school administrators, health professionals, and members of the food industry. In addition, in 2007, TDA established the Healthy Students=Healthy Families Advisory Committee to evaluate the TPSNP from the perspective of various stakeholders including health officials, parents, school administrators, and more. Also in 2007, to highlight the commendable role our schools are playing in providing nutritious meals and to point to a more comprehensive focus, TDA began promoting the Three E's of Healthy Living: Education, Exercise and Eating Right. Originally a set of nutrition guidelines, TPSNP enhances the nutrition standards for all foods served in Texas public schools participating in the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and School Breakfast Program, including school meals, a la carte items, snack bars, vending machines, school stores, and fundraising through grade-specific guidelines for unregulated foods. The TPSNP was amended in 2006 to enact greater restrictions on competitive foods, candy, fats, and frying. The purpose of the TPSNP, since its creation, has been to promote a healthier environment in Texas schools and to help ensure a healthier future for Texas children. The proposed sections include the policy, all updates to the policy, and all revisions for school years 2008-09 and 2009-10.

New §26.1 provides a statement of purpose. New §26.2 provides definitions of terms that are used in the subchapter. New §26.3 provides nutrition requirements for elementary schools including requirements for serving fats and fried foods, requirements for portion sizes, and requirements for serving competitive foods and snacks. New §26.4 provides nutrition requirements for middle and junior high schools, including requirements for serving fats and fried foods, requirements for portion sizes, and requirements for serving competitive foods and snacks. New §26.5 provides nutrition requirements for high schools, including requirements for serving fats and fried foods, requirements for portion sizes, and requirements for serving competitive foods and snacks. New §26.6 provides requirements for the sale or use of foods of minimal nutritional value in schools. New §26.7 provides exemptions to the policy. New §26.8 provides requirements for schools to provide a healthy nutrition environment. New §26.9 provides for consequences of non-compliance with the new sections, including a reference to TDA's appeal procedures for appealing a disallowance of meal reimbursements. The procedures found in subsection (h) of §26.9, are the current appeal procedures used for this program. TDA is adopting by rule its appeal hearing procedures for its Food and Nutrition programs. The proposal is published in this edition of the *Texas Register*.

Fred Higgins, assistant commissioner for food and nutrition, has determined that for the first five-year period the new sections are in effect, there will be no fiscal implication for the state or local government as a result of enforcing or administering the new sections. The new sections are currently in effect, and are being proposed to put existing policies into rule.

Mr. Higgins also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be a healthier environment in Texas schools and a healthier future for Texas children. The new sections will not have a fiscal impact on micro-businesses, small businesses or individuals required to comply with these new sections because they impose no new requirements. In addition, because the proposed changes have no adverse economic impact on small businesses, as defined in Texas Government Code, §2006.002, an economic impact statement and regulatory flexibility analysis for small businesses are not required. The entities required to comply with the proposed new sections are independent school districts that participate in the National School Lunch, School Breakfast and Summer Food Service programs administered by TDA. Although there are some requirements in the rules that are scheduled for completion in the 2009-2010 school year and thereafter, school districts have been given ample notice of such requirements and the implementation of those requirements has already begun by most districts. For example, consistent with current policy and these rules, schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals and a la carte foods by the 2009-10 school year. Schools were given notice of this requirement in 2004. The department has allowed schools that must make extensive equipment or facility changes to apply for a written waiver to extend the time to implement the equipment or facility changes. The deadline for filing of such requests ended on July 31, 2008, and the department received 13 requests for waiver, with the remaining 1,188 school districts indicating they are either already in compliance or will be in compliance by the 2009-2010 school year. TDA has also provided a phase-in period for vended items, allowing vending contracts to run their term.

Comments on the proposal may be submitted to Fred Higgins, Assistant Commissioner for Food and Nutrition , Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.0025, which authorizes the department to administer the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program; and the Code, §12.016 which authorizes the department to adopt rules as necessary for the administration of its powers and duties under this code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§26.1. Statement of Purpose.

Unless otherwise noted in this subchapter, all Texas public schools participating in the federal child nutrition programs (National School

Lunch Program, which includes the Seamless Summer Option and After School Care Program, and School Breakfast Program) must comply with the nutrition policies set forth in this subchapter. These policies are intended to supplement federal policies defined by the U.S. Department of Agriculture's Food and Nutrition Services. As a result of local nutrition and wellness policies, school districts may have stricter nutrition guidelines. Any questions or concerns regarding the Texas Public School Nutrition Policy may be directed to: Texas Department of Agriculture Food and Nutrition Division, P.O. Box 12847, Austin, Texas 78711, 1-888-TEX KIDS or Squaremeals@tda.state.tx.us.

§26.2. Definitions.

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

(1) A La Carte--Individually priced food items provided by the school food service department. These items may or may not be part of the reimbursable school meal.

(2) Competitive Foods--Foods and beverages sold or made available to students that compete with the school's operation of the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and/or School Breakfast Program. This definition includes, but is not limited to, food and beverages sold or provided in vending machines, in school stores or as part of school fundraisers. School fundraisers include food sold by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, or any other person, company or organization.

(3) FMNV--Foods of Minimal Nutritional Value. The four categories of foods and beverages (soda water, water ices, chewing gum, and certain candies) that are restricted by the U. S. Department of Agriculture under the child nutrition programs. See §26.6 of this title (relating to Foods of Minimum Nutritional Value (FMNV)).

(4) Food Service--The school's operation of the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and/or School Breakfast Program and includes all food service operations conducted by the school principally for the benefit of schoolchildren and all of the revenue from which is used solely for the operation or improvement of such food services.

(5) Fried Foods--Foods that are cooked by total immersion into hot oil or other fat, commonly referred to as "deep-fat frying." This definition does not include foods that are stir-fried or sautéd.

(6) Fruit or Vegetable Drink--Beverages labeled as containing fruit or vegetable juice in amounts less than 100 percent.

(7) Fruit or Vegetable Juice--Beverages labeled as containing 100 percent fruit or vegetable juice.

(8) Reimbursable School Meal--A meal provided under the National School Lunch Program, which includes the Seamless Summer Option and After School Care Program, and/or School Breakfast Program that meets all USDA requirements in accordance with all applicable federal regulations, policies, instructions, and guidelines and for which the schools receive reimbursement.

(9) School Day--The school day begins with the start of the first breakfast period and continues until the end of the last instruction period of the day (last bell).

(10) Snacks--Either competitive foods or a la carte, as defined in this section, depending on whether or not they are provided by the school food service department.

(11) Trans Fat--When manufacturers use hydrogenation, a process in which hydrogen is added to vegetable oil to turn the oil into a more solid (saturated) fat. Trans fats may be found in such foods as margarine, crackers, candies, cookies, snack foods, fried foods, baked goods, salad dressings, and other processed foods.

§26.3. Elementary Schools.

(a) Definition. For purposes of this subchapter, an elementary school campus is defined as any campus containing a combination of grades Early Elementary (EE) - 6. Kindergarten - grade 12 (K- 12) schools may follow the requirements designated for middle and junior high schools in this subchapter.

(b) Foods of Minimal Nutritional Value (FMNV) Policy.

(1) Elementary school campuses may not serve or provide access for students to FMNV and all other forms of candy at any time anywhere on school premises until the end of the last scheduled class.

(2) FMNV may not be sold or given away to students on school premises by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, guest speakers, or any other person, company or organization. For exemptions and a listing of foods and beverages restrictions, see §26.6 of this title (relating to Foods of Minimal Nutritional Value (FMNV)).

(c) Nutrition Standards. The following specific nutrition standards apply to all foods and beverages served or made available in reimbursable school meals, a la carte food items, and nutritious classroom snacks to students on elementary school campuses.

(1) Fats and Fried Foods.

(A) Schools and other vendors may not serve to students individual food items that contain more than 23 grams of fat with an exception of one individual food item per week.

(B) No individual food item can exceed 28 grams of fat at any time. This excludes peanut butter when served as part of a reimbursable school meal.

(C) Schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals and a la carte foods. Schools that must make extensive equipment or facility changes must be in compliance by the 2009-10 school year or TDA must have approved a written waiver filed by school district no later than July 31, 2008, to extend the time to implement the equipment or facility changes.

(D) Foods that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(E) Potato products.

(i) French fries and other fried potato products that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(I) Servings must not exceed 3 ounces;

(II) Servings may not be offered more than once per week;

(III) Students may only purchase one serving at a time. (This does not pertain to potato chips, which are mentioned specifically in subsection (c)(2) of this section.)

(ii) Baked potato products (wedges, slices, whole, new potatoes) that are produced from raw potatoes and have not been

pre-fried, flash-fried or par-fried in any way may be served without restriction.

(F) Schools must include a request for trans fat information in all product specifications.

(G) Schools must reduce the purchase of any products containing trans fats.

(2) Portion Sizes.

(A) The following maximum portion size and nutrient restrictions apply to all foods and beverages served or made available to students on school campuses with the exception of reimbursable school meals, which are governed by USDA regulations.
Figure: 4 TAC §26.3(c)(2)(A)

(B) This subchapter does not provide exceptions or phase-in periods for school districts with vending contracts.

(3) Other.

(A) Fruit and/or vegetables must be offered daily on all points of service.

(i) Fruits and vegetables should be fresh whenever possible.

(ii) Frozen and canned fruits should be packed in natural juice, water or light syrup whenever possible.

(B) Schools must offer 2 percent, 1 percent or skim milk at all points where milk is served.

(C) Elementary schools must serve only milk, unflavored water and 100 percent fruit and or vegetable juice.

(D) No electrolyte replacement beverages (sports drinks) may be served or sold.

(d) Competitive Foods and Snacks

(1) An elementary school campus may not serve competitive foods (or provide access to them through direct or indirect sales) to students anywhere on school premises throughout the school day until the end of the last scheduled class except for those food items made available by the school food service department.

(2) All foods, beverages and snack items must comply with the nutrition standards and portion size restrictions in this subchapter.

(3) Elementary classrooms may allow one nutritious snack per day under the teacher's supervision, but it may not be served during regular meal periods for that class. The snack may be provided by the school food service, the teacher, parents or other groups and should be at no cost to students.

(4) Prepackaged snacks must comply with fat and sugar limits of this subchapter, and must be single-size servings. No snacks (homemade and prepackaged) may contain any FMNV or consist of candy or dessert type items (cookies, cakes, cupcakes, pudding, ice cream or frozen desserts, etc).

§26.4. Middle/Junior High Schools.

(a) Definition. For purposes of this subchapter, a middle school campus is defined as a campus containing grades 6, 7 and 8. A junior high school campus may contain either grades 7 and 8, or grades 7, 8 and 9. K-12 schools may follow this subchapter's requirements designated for middle and junior high schools.

(b) Foods of Minimal Nutritional Value (FMNV).

(1) Middle school and junior high school campuses may not serve or provide access for students to FMNV and all other forms of candy at any time anywhere on school premises until after the end of the last scheduled class.

(2) FMNV may not be sold or given away to students on school premises by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, guest speakers, or any other person, company or organization. For exemptions and a listing of foods and beverages restricted by the FMNV policy, see §26.6 of this title (relating to Foods of Minimal Nutritional Value (FMNV)).

(c) Nutrition Standards. The following specific nutrition standards apply to all foods and beverages served or made available in reimbursable school meals, a la carte food items and competitive foods to students on middle and junior high school campuses.

(1) Fats and Fried Foods.

(A) Schools and other vendors may not serve individual food items that contain more than 23 grams of fat with an exception of one individual food item per week.

(B) No individual food item can exceed 28 grams of fat at any time. This excludes peanut butter when served as part of a reimbursable school meal.

(C) Schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals, a la carte, snack lines, and competitive foods. Schools that must make extensive equipment or facility changes must be in compliance by the 2009-10 school year or TDA must have approved a written waiver filed by school district no later than July 31, 2008, to extend the time to implement the equipment or facility changes.

(D) Foods that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(E) Potato products

(i) French fries and other fried potato products that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(I) Servings must not exceed 3 ounces;

(II) Servings may not be offered more than three times per week;

(III) Students may only purchase one serving at a time. (This does not apply to potato chips, which are mentioned specifically in paragraph (c)(2) of this section relating to Portion Sizes;

(ii) Baked potato products (wedges, slices, whole, new potatoes) that are produced from raw potatoes and have not been pre-fried, flash-fried or par-fried in any way may be served without restriction.

(F) Schools must include a request for trans fat information in all product specifications.

(G) Schools must reduce the purchase of any products containing trans fats.

(2) Portion Sizes.

(A) The following maximum portion size and nutrient restrictions pertain to all foods and beverages served or made available to students on school campuses with the exception of reimbursable school meals, which are governed by USDA regulations.
Figure: 4 TAC §26.4(c)(2)(A)

(B) This subchapter does not provide exceptions or phase-in periods for school districts with vending contracts.

(3) Other.

(A) Fruit and/or vegetables must be offered daily on all points of service.

(i) Fruits and vegetables should be fresh whenever possible.

(ii) Frozen and canned fruits should be packed in natural juice, water or light syrup whenever possible.

(B) Schools must offer 2 percent, 1 percent or skim milk at all points where milk is served.

(d) Competitive Foods.

(1) A middle or junior high school campus may not serve competitive foods (or provide access to them through direct or indirect sales) to students anywhere on school premises from 30 minutes before to 30 minutes after meal periods except for those food items made available by the school food service department.

(2) All foods, beverages and snack items must comply with the nutrition standards and portion size restrictions in this subchapter.

§26.5. High Schools.

(a) Definition. For purposes of this subchapter, a high school campus is defined as any campus containing a combination of grades 9, 10, 11 and 12. K-12 schools may follow requirements designated for middle and junior high schools in this subchapter.

(b) Foods of Minimal Nutritional Value (FMNV).

(1) During school year 2008-09, high schools may not serve or provide access to FMNV during meal periods in areas where reimbursable school meals are served and/or consumed. Thereafter, high schools may not serve or provide access to FMNV and all other forms of candy at any time anywhere on school premises until the end of the last scheduled class. Such foods and beverages may not be sold or given away to students on school premises by school administrators or staff (principals, coaches, teachers, etc.), students or student groups, parents or parent groups, guest speakers, or any other person, company or organization. For exemptions and a listing of foods and beverages restricted by the FMNV policy, see §26.6 of this title (relating to Foods of Minimal Nutritional Value (FMNV)).

(2) Vending contracts and renewals and amendments executed after March 3, 2004, must expressly prohibit the sale of sugared, carbonated beverages in containers larger than 12 ounces.

(3) No more than 15 percent of the beverages made available through each vending machine or other service point on high school campuses are allowed to be sugared, carbonated soft drinks.

(4) Sugared, carbonated beverages are limited to 12 ounce containers.

(c) Nutrition Standards. The following specific nutrition standards apply to all foods and beverages served or made available in reimbursable school meals, a la carte food items and competitive foods to students on high school campuses.

(1) Fats and Fried Foods.

(A) Schools and other vendors may not serve individual food items that contain more than 23 grams of fat with an exception of one individual food item per week.

(B) No individual food items can exceed 28 grams of fat at any time. This excludes peanut butter when served as part of a reimbursable school meal.

(C) Schools must eliminate deep-fat frying as a method of on-site preparation for foods served as part of reimbursable school meals, a la carte food items, snack lines, and competitive foods. Schools that must make extensive equipment or facility changes must be in compliance by the 2009-10 school year or TDA must have approved a written waiver filed by school district no later than July 31, 2008, to extend the time to implement the equipment or facility changes.

(D) Foods that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep fat frying.

(E) Potato products.

(i) French fries and other fried potato products that have been pre-fried, flash-fried or par-fried by the manufacturer may be served to students but must be baked or heated by a method other than deep-fat frying.

(I) Servings must not exceed 3 ounces;

(II) Students may only purchase one serving at a time. (This does not pertain to potato chips, which are mentioned specifically in paragraph (2) of this subsection.)

(ii) Baked potato products (wedges, slices, whole, new potatoes) that are produced from raw potatoes and have not been pre-fried, flash-fried or par-fried in any way may be served without restriction.

(F) Schools must include a request for trans fat information in all product specifications.

(G) Schools must reduce the purchase of any products containing trans fats.

(2) Portion Sizes.

(A) The following maximum portion size and nutrient restrictions apply to all foods and beverages served or made available to students on school campuses with the exception of reimbursable school meals, which are governed by USDA regulations.
Figure: 4 TAC §26.5(c)(2)(A)

(B) Beginning in school year 2009-10, this subchapter prohibits high school students' access to FMNV at any time anywhere on school premises until the end of the last scheduled class. Certain carbonated beverages such as soda water fall within the FMNV category. This subchapter does not provide exceptions or phase-in periods for school districts with vending contracts.

(3) Other.

(A) Fruit and/or vegetables must be offered daily on all points of service.

(i) Fruits and vegetables should be fresh whenever possible.

(ii) Frozen and canned fruits should be packed in natural juice, water or light syrup whenever possible.

(B) Schools must offer 2 percent, 1 percent or skim milk at all points where milk is served.

(d) Competitive Foods.

(1) High schools may not serve competitive foods (or provide access to them through direct or indirect sales) to students dur-

ing meal periods in areas where reimbursable school meals are served and/or consumed except for those food items made available by the school food service department.

(2) All foods, beverages and snack items must comply with the nutrition standards and portion size restrictions in this subchapter.

§26.6. Foods of Minimal Nutritional Value (FMNV).

(a) Prohibition of sale. Federal regulations prohibit the sale of certain foods, determined to be of minimal nutritional value, in the foodservice area during meal periods.

(b) Restricted Foods. Foods and beverages that are restricted from sale to students are classified in the following four categories:

(1) Soda Water: Any carbonated beverage. No product shall be excluded from this definition because it contains discrete nutrients added to the food such as vitamins, minerals and protein.

(2) Water Ices: Any frozen, sweetened water such as "...sicles" and flavored ice with the exception of products that contain fruit or fruit juice.

(3) Chewing Gum: Any flavored products from natural or synthetic gums and other ingredients that form an insoluble mass for chewing.

(4) Certain Candies: Any processed foods made predominantly from sweeteners or artificial sweeteners with a variety of minor ingredients that characterize the following types:

(A) Hard Candy: A product made predominantly from sugar (sucrose) and corn syrup that may be flavored and colored, is characterized by a hard, brittle texture and includes such items as sour balls, lollipops, fruit balls, candy sticks, starlight mints, after dinner mints, jaw breakers, sugar wafers, rock candy, cinnamon candies, breath mints, and cough drops.

(B) Jellies and Gums: A mixture of carbohydrates that are combined to form a stable gelatinous system of jellylike character and are generally flavored and colored, and include gum drops, jelly beans, jellied and fruit-flavored slices.

(C) Marshmallow Candies: An aerated confection composed of sugar, corn syrup, invert sugar, 20 percent water, and gelatin or egg white to which flavors and colors may be added.

(D) Fondant: A product consisting of microscopic-sized sugar crystals that are separated by a thin film of sugar and/or invert sugar in solution such as candy corn or soft mints.

(E) Licorice: A product made predominantly from sugar and corn syrup that is flavored with an extract made from the licorice root.

(F) Spun Candy: A product that is made from sugar that has been boiled at high temperature and spun at a high speed in a special machine.

(G) Candy Coated Popcorn: Popcorn that is coated with a mixture made predominantly from sugar and corn syrup.

(c) Exceptions. USDA has approved exceptions for certain products included in the above categories. See the Texas Department of Agriculture's Food and Nutrition Division's Administrators Reference Manual, for the current list of these exemptions.

§26.7. Exemptions to the Policy.

(a) The following are exemptions to this subchapter.

(1) School Nurses. This policy does not apply to school nurses using FMNV during the course of providing health care to individual students.

(2) Accommodating Students with Special Needs. Special Needs Students whose Individualized Education Program (IEP) plan indicates the use of an FMNV or candy for behavior modification (or other suitable need) may be given FMNV or candy items.

(3) School Events. Students may be given FMNV, candy items or other restricted foods during the school day for up to three different events each school year to be determined by campus. The exempted events must be approved, in writing, by a school official. During these events, FMNV may not be given during meal times in the areas where school meals are being served or consumed, and regular meal service (breakfast and lunch) must continue to be available to all students in accordance with federal regulations.

(4) TAKS Test Days. Schools and parents may provide one additional nutritious snack per day for students taking the TAKS tests. The snack must comply with fat and sugar limits of this subchapter and may not contain any FMNV or consist of candy, chips or dessert type items (cookies, cakes, cupcakes, pudding, ice cream or frozen desserts, etc.). Packaged snacks must be in single size servings. These snacks are not part of the After School Care program but a nutritious snack served by the school/parents to students.

(5) Instructional Use of Food in Classroom. For instructional purposes, teachers may use foods as long as the food items are not considered FMNV or candy. Students may consume food prepared in class for instructional purposes. However, this should be on an occasional basis, and food may not be provided or sold to other students or classes. Food provided for students as part of a class or school cultural heritage event for instructional or enrichment purposes would be exempt from the policy. However, FMNV may not be served during meal periods in the areas where school meals are being served or consumed, and regular meal service (breakfast and lunch) must continue to be available to all students.

(6) Field Trips. School-approved field trips are exempt from this subchapter. A school official must approve, in writing, the dates and purposes of the field trips in advance.

(7) Athletic, UIL, Band, and Other Competitions. This subchapter does not apply to students who leave campus to travel to athletic, UIL, band, or other competitions. The school day is considered to have ended for these students. School activities, athletic functions, etc. that occur after the normal school day are not covered by this subchapter.

(8) In classroom birthday parties.

(A) Parents or grandparents of a student may bring food items that may be otherwise restricted by this subchapter for an in-classroom birthday party on the occasion of the child's birthday. However, the birthday parties must be held after the class' lunch period so as not to spoil the children's appetite for a nutritious meal.

(B) Parents or grandparents may bring restricted food items for children at a school designated function. However, the function must be one of the school's allotted three event days per year. Schools will not be reimbursed for meals served for any days in excess of the three event days per year permitted in paragraph (3) of this subsection.

(b) This subchapter does not restrict what parents may provide for their own child's lunch or snacks. Parents may provide FMNV or candy items for their own child's consumption, but they may not provide restricted items to other children at school. A school may adopt a more restrictive rule, however, as local policy.

§26.8. Healthy Nutrition Environment.

(a) All school cafeterias and dining areas should be healthy nutrition environments. Texas public schools participating in federal child nutrition programs should ensure that all students have daily access to school meals (breakfast and lunch).

(b) Schools should not establish policies, class schedules, bus schedules, or other barriers that directly or indirectly restrict meal access.

(c) Adequate time should be allowed for students to receive and consume meals, and cafeterias should provide a pleasant dining environment. The minimum recommended eating time for each student after being served is at least 10 minutes for breakfast and 20 minutes for lunch.

(d) The Texas Department of Agriculture encourages all school districts to adhere to the coordinated school health and physical activity components of the Texas Education Code. It is recommended that PE or recess should be scheduled before lunch whenever possible.

(e) The Texas Department of Agriculture encourages the availability of plain bottled water and 100 percent fruit and vegetable juice at any time anywhere on campus. There is no portion size or serving time restriction on non-carbonated, unflavored, bottled water at any school level. There is no restriction on serving time and location for 100 percent fruit and vegetable juice; however, the portion and sugar restrictions for 100 percent fruit and vegetable juice in the TPNSP must be followed for the appropriate grade levels. It is permissible for the school food service, school or school-supported organizations to sell plain bottled water and 100 percent fruit and vegetable juices that comply with the TPSNP portion and sugar restrictions for the appropriate grade levels, in vending machines or through other means throughout the school day on all campuses. Milk may also be sold, but must also follow the portion and sugar restrictions of the TPSNP for milk.

§26.9. Compliance and Penalties.

(a) The Texas Department of Agriculture (TDA) will enforce and diligently monitor schools to ensure compliance with this subchapter.

(b) If TDA determines that a school has violated this subchapter, TDA shall disallow meal reimbursement for the day on which the violation occurred and require the school to reimburse the food service account for the disallowed reimbursement.

(c) TDA may, depending on the nature and severity of the violation, impose additional sanctions on the school or school district, including disallowance of all meal reimbursements to the school district for the four-week period immediately preceding the day of the violation(s).

(d) TDA may interview school staff and collect evidence to determine the longevity and severity of the violation(s).

(e) TDA may waive a disallowance of meal reimbursement for the violation if the disallowance does not exceed $600. Such a disallowance may be waived for each on-site visit within the school year.

(f) School districts must comply with a documented corrective action plan, approved by TDA. TDA will monitor the school district to ensure compliance with the corrective action plan.

(g) A school district will be notified, in writing, when meal reimbursements are disallowed due to violations of this chapter.

(h) School districts may appeal disallowance of meal reimbursements in accordance with the requirements set forth in this subsection and TDA's appeal hearing procedures for the Food and Nutrition Programs located in Chapter 1, Subchapter P, Division 6, §§1.1050 - 1.1053 of this title (relating to Administrative Hearing Procedures for Conducting the Appeals of the Food and Nutrition Programs).

(1) School district appeal of TDA findings. A school district may request an administrative review of a denial of all or a part of a disallowance of meal reimbursements arising from the results of a comprehensive on-site evaluation or follow-up activity conducted by TDA under this subchapter. Procedures include the following requirements:

(A) school districts are assured a fair and impartial hearing before an independent official at which they may be represented by legal counsel;

(B) decisions will be rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review;

(C) school districts are afforded the right to either an administrative review of the record with the right to file written information, or a hearing which they may attend in person; and

(D) adequate notice is given of the time, date, place, and procedures of the hearing.

(2) Request for administrative review. School districts must use the following procedures to request an administrative review (appeal) of action subject to review described in paragraph (1) of this subsection.

(A) Action subject to administrative review. The only action subject to administrative review is the fiscal action disallowing meal reimbursements from the results of a comprehensive on-site evaluation or follow-up activity conducted by TDA under this subchapter.

(B) Procedures for requesting an administrative review (appeal). The following procedures shall apply when a school district requests an administrative review (appeal) of an action subject to appeal under this subsection:

(i) Notice of denial. A school district shall be given notice of the action being taken or proposed, the basis for the action, and the procedures under which the school district may request an administrative review of the action.

(ii) Request for administrative review. The request for an administrative review shall be submitted in writing and postmarked not later than fifteen (15) days after the date the notice of denial is received. The request for review shall also clearly identify the action being appealed, and include a photocopy of the notice of denial. TDA shall acknowledge the receipt of the request for a review within ten (10) days of its receipt of the request.

(iii) Representation. The school district may retain legal counsel, or may be represented by another person.

(iv) Review of record. Any information on which TDA's action was based shall be available to the school district for inspection from the date of receipt of the request for an administrative review.

(v) Opposition. The school district may refute the findings contained in the notice of denial in person or by submitting written documentation to the Administrative Review Official (ARO). In order to be considered, written documentation shall be submitted to the ARO not later than thirty (30) days after receipt of the notice of denial.

(vi) Hearing. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information only if the school district requests a hearing in the written request for an adminis-

trative review. The rules and procedures for a hearing for appeals under this subchapter are found in §§1.1050 - 1.1053 of this title.

(vii) Basis for decision. The ARO shall make a determination based on information provided by TDA and the school district, and on Program regulations.

(viii) Time for issuing a decision. Within sixty (60) days of TDA's receipt of the request for an administrative review, the ARO shall inform TDA and the school district of the determination of the ARO. This timeframe is an administrative requirement for TDA and may not be used as a basis for overturning TDA's action if a decision is not made within the specified timeframe.

(ix) Final decision. The determination made by the ARO is the final administrative determination afforded to the school district and shall take effect upon receipt of the written notice of the final decision by the school district.

(x) Record of result of reviews. TDA shall maintain searchable records of all administrative reviews and their disposition for (3) three years from the date of the final decision.

(xi) Effect of State agency action. TDA's action shall remain in effect during the appeal process.

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-200805953
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 463-4075

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §§38.1 - 38.7

The Texas Animal Health Commission (Commission) proposes a new Chapter 38, §§38.1 - 38.7, concerning Trichomoniasis.

Bovine Trichomoniasis (aka trichomoniasis or trich) is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus (T. foetus).* The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes early embryonic death, abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after three to four heat cycles. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts), making for a more hospitable environment for trich to live.

Certain herd management practices are risk factors for infection--commingled grazing or fence-line contact, where fences are not well maintained, with other herds is one documented risk factor, as is purchase of bulls of unknown disease status. Control of *T. foetus* in an infected herd includes testing bulls and culling those infected. Although use of younger bulls has been recommended as a control strategy because they have a lower prevalence of infection than older bulls, such use will not eliminate the possibility of infection. Artificial insemination is considered the classic method for controlling venereal diseases of cattle. However, this is often impractical in range cattle operations due to lack of facilities, expertise or management practices. Additionally, annual pregnancy testing and culling of non-pregnant cows can help control herd infection. Also, vaccination of females can decrease duration and severity of infection. If exposure to other risk factors cannot be avoided, vaccination is believed to help reduce economic loss.

The Commission convened a Trichomoniasis (Trich) Working Group (TWG) which met on September 26, 2008, in Austin, Texas. Eighteen members were present. Trich Working Group Chairman Coleman Locke, Beef Cattle Commissioner, lead a discussion of objectives. The goal of the group was to provide recommendations to the Texas Animal Health Commission on the components and implementation strategy for a Trichomoniasis Control Program for the State of Texas. The members were in agreement with the goal.

The first point of discussion was relative to the type of bulls to be tested. Should Texas accept "virgin" bulls without a negative test? After discussion, members agreed that we should accept bulls as virgin, with a breeder's certification of virginity, up to the loss of the first two incisor teeth. Bulls would be approximately 18 months of age at time of loss of first two incisors. Bulls with erupting incisors would have to be tested prior to entry into Texas or sale as breeding bulls in Texas. Also it was discussed whether the rules should be applied to cows and heifers as well as bulls. Some members expressed concerns over early bred cows and heifers and open cows and noted that these animals, if from an infected herd, could spread the disease into a buyer's herd. A number of states include cows and heifers in their regulations. After discussion, the TWG agreed that our program should only impact bulls, but that there should be an education component to educate producers about the dangers posed by purchased cows of unknown status.

The members expressed concerns about having another long, drawn out regulatory program such as the cattle brucellosis program. The TWG supported the inclusion in the rules of a requirement for a program review group that would meet annually to evaluate progress of the program and make recommendations relative to sunsetting the program or for improvement to the program.

Approved Tests. Which Trichomoniasis tests should be approved to test bulls for importation or for sale in the state? Culture of Trich organisms is the gold standard test for the disease. The recommendation is to collect the test sample in an InPouch and incubate the sample in the same pouch. Microscopic evaluation and identification of the organism in the pouch denotes a positive test. The other test approved for use in most other states is the Real Time Polymerase Chain Reaction test (RT-PCR) which is performed on a sample collected and incubated in an InPouch. The TWG recommended that culture in an InPouch followed by microscopic identification of the cultured organism, and, the RT-PCR test performed on InPouch samples be classified as official approved tests for the Texas Trichomoniasis Program. The estimated laboratory costs (does not include veterinary collection or sample shipping costs)

for culture tests is $5.00 per culture, and for RT-PCR tests is $25.00 per sample.

The group also discussed how many tests are needed to determine the status of an animal. It was recommended that a single test of all non-virgin bulls in the herd, in which all of the bulls were negative, would be sufficient for movement or sale for breeding of any tested bull in the bull herd. It was recommended that bulls of unknown status, or non-virgin bulls from a herd that is Trich infected be tested negative on three culture tests performed not less than 7 days apart or be negative to at least two RT-PCR tests performed not less than 7 days apart.

Approved Labs. Currently many veterinary practitioners culture and examine Trich samples in their clinic laboratories. A number of states approve veterinary practitioner labs as official laboratories. However, neither TVMDL nor TAHC have the personnel or resources to conduct the training, check testing and certification necessary to establish practitioner labs as approved labs. The TWG recommended, at least as a place to start, that the TVMDL laboratories be classified as the official Trich laboratories for Texas. TVMDL has the staff and laboratory capacity to perform the tests for the program. Members agreed that if additional laboratories are needed, or logistic challenges (i.e. too far from an approved lab, inadequate mail service, etc) TAHC labs and private practitioner labs could be considered at a later time.

Certification of veterinarians. Almost all states have some degree of required training or certification of veterinarians for collection of samples, handling and processing of samples for shipment to laboratories, reporting of results and handling of positive animals and herds. It was suggested and the TWG members agreed that TAHC would evaluate the certification programs of other states and identify the most appropriate components for inclusion in our program. The Commission will work with representatives from TVMA and from Texas AgriLife Extension Service to develop and deliver a veterinary Trichomoniasis certification program.

Identification of bulls. The TWG concurred that bulls tested for Trich would be identified by an official identification device or method at the time the initial test sample is collected. Official identification would include: Official Alpha-numerical USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands.

What happens when a bull is found to be infected? Many states have provisions for evaluation of culture positive bulls by means of a confirmatory RT-PCR test. The TWG recommended that a provision to petition for a confirmatory RT-PCR test be included in the Texas program. Bulls that have been determined to be infected by culture and/or confirmatory RT-PCR would be placed under hold order along with all other non-virgin bulls in the bull herd. Positive bulls could only be sold for slaughter. Movement to slaughter should occur within 30 days from disclosure of positive test results (or confirmatory test results). Positive bulls could be moved to markets for sale only directly to slaughter or from the ranch directly to slaughter. Infected bulls would be individually identified by official identification device on a VS 1-27 movement permit from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition. All bulls remaining in the herd from which an infected bull(s) has been identified would have to be tested two more times. Any bull positive on the second or third test would be classified as infected. All bulls negative to all three tests would be classified as negative and could be released for breeding.

Reporting of Trich test results. After discussion of the issue the TWG recommended that all Trich tests performed - both positive and negative - be reported to TAHC. Results should be reported within 48 hours following completion of the test. At the present time the prevalence and distribution of Trich in Texas is not well identified. The reporting of all tests would enable development of prevalence and distribution data for the state and may help in the future to determine the most appropriate direction for the program.

Validity of test results. The group also discussed how long a negative test would be valid. The TWG agreed that imported breeding bulls have a negative test that was conducted within 30 days of importation into Texas. The TWG concurred that for sale of breeding bulls raised, tested and sold in Texas, that the negative test would in actuality be valid until the bull was exposed to a cow. From a practical and workable standpoint, members agreed that the negative status of tested bulls would be valid for 150 days from the test date so long as the bull had been maintained in isolation from any contact with female cattle from the time of Trich sample collection.

Chapter 38 contains the following sections:

Section 38.1 is entitled "Definitions" and provides definitions for terms utilized in this chapter.

Section 38.2 is entitled "General Requirements" and contains test and identification for bulls as well as contains the standards for a confirmatory test.

Section 38.3 is entitled "Infected Bulls and Herds" and describes how infected bulls and their associated herds are handled.

Section 38.4 is entitled "Certified Veterinary Practitioners" and provides that only veterinarians certified through the Commission shall collect samples for official tests for Trichomoniasis within the state of Texas.

Section 38.5 is entitled "Official Laboratories" and provides that the Texas Veterinary Medical Diagnostic Laboratory is the official laboratory to conduct testing for Trichomoniasis.

Section 38.6 is entitled "Official Trichomoniasis Tests" and recognizes which test are official test for Trichomoniasis.

Section 38.7 is entitled "Review of the Program" and establishes that the program will be reviewed in order to determine the effectiveness of this control program and make recommendations to the Commission whether the program should be continued or sunsetted.

FISCAL NOTE

Ms. Angela Lucas, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on cattle breeders or raisers. The purpose of the rule is to determine whether or not they have an infected animal in their herd. If they have an undisclosed Trichomoniasis bull in their herd then they will be spreading the disease and infecting other animals in their herd.

Also if these undisclosed animals are infected and sold they will spread the disease to other herds and animals. The purpose of the rule is to assure that bulls sold for breeding purposes in the state are not infected with Trich. For these reasons the Commission has determined that there is not an adverse impact on these cattle raisers and breeders and therefore there is no need to do an EIS. The economic cost for this program is negligible as it is primarily only the cost of the test. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rules are in effect, the public benefit to individuals is limited to ensuring that the health status of these animals is known which protects the livestock industry in this state.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas 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.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The new rules are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

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

§38.1. Definitions.

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

(1) Accredited veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Affected herd--Any herd in which any cattle have been classified as *Tritrichomonas foetus* positive on an official test and which has not completed the requirements for elimination of the disease from the herd.

(3) Cattle--All dairy and beef animals (genus Bos) and bison (genus Bison).

(4) Certified Veterinarians--Veterinarians certified with, and approved by the Commission to collect Trichomoniasis samples for official Trichomoniasis culture testing and to perform any other official function under the Trichomoniasis program.

(5) Commission--The Texas Animal Health Commission.

(6) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(7) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered sterile for breeding.

(8) Exposed cattle--Cattle that are part of an affected herd or cattle that have been in contact with Trichomoniasis infected cattle.

(9) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Approved feedlots and approved pastures are not considered to be herds.

(10) Herd test--An official test of all non-virgin bulls in a herd.

(11) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(12) Infected Cattle--Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected.

(13) Infected Herd--The non-virgin bulls in any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected.

(14) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the Commission to restrict the movement of livestock or exotic livestock.

(15) Negative--Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis.

(16) Official identification/officially identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification includes USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, official breed registry individual animal brands, and official Trich tags issued by the animal health official of the state of origin of imported bulls.

(17) Official trichomoniasis test--A test for bovine trichomoniasis, approved by the Commission, applied and reported by TVMDL or any other laboratory classified as an official laboratory by the Commission.

(18) Positive--Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis.

(19) Permit (VS 1-27)--A pre-movement authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.

(20) Quarantine--A written Commission document or a verbal order followed by a written order restricting movement of animals because of the existence of or exposure to Trichomoniasis. The Commission may establish quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the Commission designates to be a carrier of Trichomoniasis and/or an animal into an affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(21) Test-Eligible Cattle--All sexually intact non-virgin male cattle and all sexually intact male cattle which have erupting or erupted permanent incisor teeth (or older), which are being imported into the state of Texas or being sold, leased, gifted or exchanged in the state of Texas.

(22) Trichomoniasis--A venereal disease of cattle caused by the organism *Tritrichomonas foetus*.

(23) TVMDL--The official laboratory for testing is the Texas Veterinary Medical Diagnostic Laboratory.

(24) Virgin Bull--Sexually intact male cattle which have not serviced a cow and which are young enough that neither of the first two incisor teeth have been lost.

§38.2. General Requirements.

(a) Test Requirements: All Texas origin bulls sold for breeding purposes in the State of Texas shall meet the following testing or certification requirements prior to sale or change of ownership in the state:

(1) Be certified as virgin, by the breeder or his representative, on and accompanied by a breeder's certificate of virgin status, or,

(2) Be part of a whole herd negative test conducted on all non-virgin bulls in the herd within 150 days of sale or movement, be held separate from all female cattle since the test date, and be accompanied by a Trich test record showing the negative test results, or,

(3) If from a herd of unknown status (a herd that has not had a whole herd test), or a Trich infected herd, be tested negative on three consecutive culture tests conducted not less than seven days apart or two consecutive RT-PCR tests conducted not less than seven days apart with the final test being within 150 days of sale or movement, be held separate from all female cattle since the test date, and be accompanied by a Trich test record showing the negative test results.

(b) Identification of bulls: All bulls certified as virgin bulls shall be identified by an official identification device or method on the breeder's certification of virgin status. All bulls tested for Trichomoniasis shall be identified by an official identification device or method at the time the initial test sample is collected. Official identification includes: Official Alpha-numerical USDA metal ear tags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands. That identification shall be recorded on the test documents prior to submittal.

(c) Confirmatory Test: The owner of any bull which tests positive for Trichomoniasis may request in writing, within five (5) days of the positive test, that the Commission allow a confirmatory test be performed on the positive bull. If the confirmatory test is positive the bull will be classified as infected with Trichomoniasis. If the confirmatory test is negative the bull shall be retested in not less than seven (7) days to determine its disease status. If the confirmatory test reveals that the bull is only infected with fecal trichomonads, the test may be considered negative.

(d) Untested Bulls: Bulls presented for sale without a breeder's certification of virgin status or a Trich test record showing negative test results may:

(1) Be sold for movement only directly to slaughter, or,

(2) Be sold and moved under a Hold Order to such place as specified by the Commission for testing to change status from a slaughter bull to a breeding bull. Such bulls shall be officially individually identified with a permanent form of identification prior to movement, move to the designated location on a VS 1-27 permit, be held at the designated location for not less than 21 days where the bull shall undergo three culture tests or at least two RT-PCR tests. If the results of any test are positive the bull shall be classified as infected and be permitted for movement only directly to slaughter or to a market for sale directly to slaughter.

§38.3. Infected Bulls and Herds.

(a) Bulls that have been determined to be infected by culture or by RT-PCR and/or by confirmatory RT-PCR shall be placed under hold

order along with all other non-virgin bulls in the bull herd. Infected bulls must be isolated from all female cattle from the time of diagnosis until final disposition.

(b) Positive bulls may be moved directly to slaughter or to a livestock market for sale directly to slaughter. In order to move, the bulls shall be individually identified by official identification device on a VS 1-27 movement permit from the ranch to the market and from the market to the slaughter facility, or from the ranch directly to the slaughter facility. Movement to slaughter shall occur within 30 days from disclosure of positive test results (or confirmatory test results).

(c) All bulls that are part of a herd in which one or more bulls have been found to be infected shall be placed under hold order in isolation away from female cattle until they have undergone at least two additional tests with negative results (not less than a total of three negative culture tests or two negative RT-PCR tests). All bulls remaining in the herd from which an infected bull(s) has been identified would have to be tested two more times. Any bull positive on the second or third test would be classified as positive. All bulls negative to all three tests would be classified as negative and could be released for breeding.

§38.4. Certified Veterinary Practitioners.

(a) Only veterinarians certified through the Commission may perform Trichomoniasis program procedures, including but not limited to, collection of samples for official tests for Trichomoniasis within the state of Texas, submission of samples to official laboratories, identification of tested bulls and virgin bulls, management of Trichomoniasis infected bull herds, movement of infected bulls, and reporting of test results. In order to collect and submit Trichomoniasis samples a veterinary practitioner shall be certified to perform Trichomoniasis program procedures. In order to be certified, a veterinarian shall also be licensed to practice veterinary medicine in the state of Texas and be accredited through USDA.

(b) All veterinarians desiring to perform Trichomoniasis program functions shall participate in a certification program on Trichomoniasis program requirements and procedures before performing any Tichomoniasis program functions, including but not limited to review of the disease, proper sample collection techniques, sample preservation and laboratory submission, identification of animals, management of infected herds and shipment of infected or exposed animals to slaughter. The official certification program shall be conducted by or under the auspices of the Commission. Certified veterinarians shall be recertified every three years.

(c) Certified veterinarians shall utilize approved procedures for collection of samples, identification of animals and submission of samples to laboratories.

(d) Certified veterinarians shall only utilize the official laboratories for culture of Trichomoniasis samples.

(e) Certified veterinarians shall submit all Trichomoniasis samples including all official identification on official Trichomoniasis test and report forms to the TVMDL within forty-eight (48) hours of collection of the samples.

§38.5. Official Laboratories.

(a) The official Trichomoniasis laboratories are the TVMDL laboratories or other laboratories approved by the Commission.

(b) All results of Trichomoniasis tests shall be reported to the Commission within forty-eight (48) hours of completion of the tests, by the testing laboratory or the veterinarian making the diagnosis.

§38.6. Official Trichomoniasis Tests.

Approved Tests. Approved tests shall include the culture or Real Time Polymerase Chain Reaction (RT-PCR) testing of samples collected into an InPouch by certified veterinarians following approved collection, handling and shipping protocols, then tested in approved laboratories.

(1) Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, within forty-eight (48) hours of collection and such sample is tested according to the "Official Protocol for Culture of Trichomoniasis." Samples in transit for more than forty-eight (48) hours will not be accepted for official testing and shall be discarded. During transportation, the organisms should be protected from exposure to daylight and extremes of temperature, which should remain above 5 degrees Celsius (41degrees Fahrenheit) and below 38 degrees Celsius (100.4 degrees Fahrenheit).

(2) Official Polymerase Chain Reaction Tests. Polymerase Chain Reaction is accepted as an official test or an official confirmatory test when completed by a qualified laboratory, approved by the Executive Director, and the sample is received in good condition by the laboratory within forty-eight (48) hours of collection.

(3) Other Official Tests. Other tests for Trichomoniasis may be approved by the Commission, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

§38.7. Review of the Program.

The Commission shall establish a Trichomoniasis Program Review Working Group consisting of members from the cattle industry, veterinary profession, veterinary college, extension service and agency representatives which shall annually review the Trichomoniasis program and make recommendations to the Commission on amendments to program components or operation, or whether or not the program should be continued.

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

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Gene Snelson
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CHAPTER 45. REPORTABLE DISEASES

4 TAC §45.2

The Texas Animal Health Commission (TAHC) proposes amendments to Chapter 45 concerning Reportable Diseases, §45.2, concerning Duty to Report. Texas Agriculture Code Chapter 161, §161.101 requirements related to duty of a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases. The Commission has promulgated reporting requirements and specifies specific reportable diseases in Chapter 45 of the Commission rules.

Diseases are adopted for reporting in order to be protective of animal health in Texas. The Commission is proposing that Bovine trichomonosis (aka trichomoniasis or trich) be reportable because it does have a negative economic impact on the Texas

cattle industry. The Commission is concurrently proposing a control program to prevent spread of the disease.

Bovine trichomoniasis is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes early embryonic death, abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after three to four heat cycles. Bulls over four years old are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts), making for a more hospitable environment for trich to live.

The proposed Trichomoniasis Control Program is for breeding bulls that are sold or transferred within this state or imported into this state. As part of the program all nonvirgin breeding bulls will need to be tested prior to sale. That program is being proposed as Chapter 38 of Title 4 of the Texas Administrative Code. As support for that program the Commission is listing Trichomoniasis as a reportable disease.

FISCAL NOTE

Ms. Angela Lucas, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. There will be no economic cost to individuals required to comply with the rule as proposed. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that we will receives reports of when the disease is diagnosed in the state and therefore prevent the spread of the disease.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.101 provides that the Commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by subsection (a) or (b) if the Commission determines that action to be necessary for the protection of animal health in this state. The Commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the Commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

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

§45.2. Duty To Report.

(a) A veterinarian, a veterinary diagnostic laboratory or a person having care, custody, or control of an animal, shall report the existence of the following diseases among livestock, exotic livestock, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis. The following listing includes diseases and conditions that are Office International Des Epizooties List A Diseases, Foreign Animal Diseases, National Program Diseases or Texas Animal Health Commission Designated Diseases.
Figure: 4 TAC §45.2(a)

(b) In addition to reporting the existence of a disease under subsection (a) of this section, the veterinarian shall also report to the commission information relating to:

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

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

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Gene Snelson
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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (Commission) proposes to amend Chapter 51, Entry Requirements, §51.8, concerning Cattle. The purpose of the amendment is to provide trichomoniasis test requirements for breeding bulls entering the state.

Bovine Trichomoniasis (aka trichomoniasis or trich) is a venereal disease of cattle caused by the protozoa *Tritrichomonas foetus*. The organism lives in the folds of the prepuce and internal sheath in bulls, and colonizes the vagina, cervix, uterus and oviducts of cows. It causes early embryonic death, abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow during natural service; however, cows generally clear infection after three to four heat cycles. Bulls over four years old are typically the main reser-

voir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts), making for a more hospitable environment for trich to live.

The Commission is currently proposing a Trichomoniasis Control Program which will include test requirements for all non-virgin breeding bulls sold in the state. As part of that program, the Commission is proposing test requirements for all non-virgin breeding bulls imported into this state. The proposed requirements located in §51.8(c) of this chapter will require that all imported breeding bulls be virgin bulls or have a negative trichomoniasis test conducted within 30 days of importation into Texas. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

FISCAL NOTE

Ms. Angela Lucas, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small or micro businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact on cattle breeders or raisers in Texas because this entry requirement will serve to protect them from buying and importing a breeding bull that is infected with Trichomoniasis. Therefore, the Commission has determined that there is not an adverse impact on these cattle raisers and breeders and therefore no need to do an EIS. There will be no economic cost to individuals required to comply with the rule as proposed.

PUBLIC BENEFIT NOTE

Ms. Lucas also 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 to protect our livestock industry from exposure to Trichomoniasis from out-of-state breeding bulls.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas 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.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These adopted rules are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendment may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

Chapter 51 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. This authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. This authority is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. This authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl.

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

§51.8. Cattle.

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

(c) Trichomoniasis Requirements. All breeding bulls entering the state shall be virgin bulls as determined by the presence of both temporary central incisor teeth, or be tested negative for Trichomoniasis with an official culture test or Real Time Polymerase Chain Reaction (RT-PCR) test within 30 days prior to entry into the state. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry. If the breeding bulls are virgin bulls they shall be individually identified by an official identification device and be accompanied with a breeders certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls. The official identification number shall be written on the breeders certificate. All bulls tested for Trichomoniasis shall be identified by an official identification device or other Commission approved method at the time the initial test sample is collected. Official identification includes: Official Alpha-numerical USDA metal eartags (bangs tags), Official 840 RFID tags, Official 840 flap or bangle tags, and Official individual animal breed registry tattoo or breed registry individual animal brands, or official state of origin Trichomoniasis tags. The identification shall be

recorded on the test documents or the breeders certificate and the certificate of veterinary inspection prior to entry. Non-virgin bulls which were not part of a negative whole herd test shall be tested three times not less than one week apart by official culture test or two times not less than one week apart by official RT-PCR test prior to entry into 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.

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CHAPTER 54. DOMESTIC AND EXOTIC FOWL REGISTRATION

4 TAC §54.1, §54.9

The Texas Animal Health Commission (Commission) proposes to amend Chapter 54, Domestic and Exotic Fowl Registration. This proposal amends §54.1, concerning Definitions and adds new §54.9, concerning Live Bird Marketing System.

The Fowl Registration Program was created to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The primary purpose of the program is to ensure that the various type of fowl being sold or transported throughout this state do not pose a disease risk which could devastate the various Texas fowl industries. Texas has experienced problems with two devastating diseases in poultry--exotic newcastle disease (END) and avian influenza (AI). Both diseases are considered "foreign animal diseases," which means they are not native to the United States. END is a high-pathogenic disease, meaning it is more likely to spread, while AI has both low-pathogenic and high-pathogenic strains. When an outbreak of a high-pathogenic disease occurs, international trade agreements ban the affected areas from international trade until they get a clean bill of health. These diseases can be carried by the various types of fowl, some of which are not clinically affected by the disease.

The rules are being amended to put in place requirements focused on live bird markets and their production systems and distributors. A live bird market (LBM) is any facility that gathers live domestic fowl to be slaughtered and/or sold onsite. They receive a continual supply of domestic fowl which are slaughtered for food purposes for people who want to obtain their food in that manner. The state of Texas has a number of these type markets and they are generally located in proximity to large urban areas. However, these types of markets are a known disease risk for fowl related diseases with particular concern for avian influenza (AI). To address the persistence of low pathogenicity avian influenza (LPAI) associated with the live bird marketing system, the United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) has instituted a cooperative program with States and industry to prevent and control the disease not only in the markets themselves, but also among production premises and poultry distributors that supply those markets. Although birds affected with LPAI often show few or no clinical signs, the disease is highly contagious and its H5 and H7 subtypes have the potential to mutate into high pathogenicity avian influenza (HPAI). HPAI results in high mortality rates for poultry, may affect humans, and causes trading partners to implement immediate trade restrictions. In other countries, cases of human infection have been linked to HPAI. The program is focused on the live bird marketing system in order to control and prevent AI as well as improve biosecurity, sanitation, and disease control at participating operations. The states are responsible for enforcing LPAI program standards but should LPAI be detected, Federal indemnification can then be made available to participating facilities that follow all program directives.

This program will apply to all participants in the LBM system, including the suppliers, dealers, haulers, auction markets, wholesalers, and live bird markets and will greatly assist the state to diagnose, control, and prevent High Path Avian Influenza and particularly H5 and H7 HPAI which is devastating to fowl and in other countries has infected people. Also, this program is intended to help participants to improve biosecurity, sanitation, and disease control in their operations as well as minimize the effects of LPAI on the U.S. commercial poultry industry.

In order for a State to join the LPAI program, all of its live bird markets, as well as producers and distributors that supply those markets, must be registered with the State and allow Federal and State inspectors access to their facilities, birds, and records. These facilities must also have written biosecurity protocols in place. These goals are achieved through regular monitoring and surveillance of all facilities in participating States. Training is a key component of the program and ensures that employees at all participating facilities understand what biosecurity protocols are and why they are important for preventing the spread of disease and for protecting animal health in this state.

Live Bird Market Requirements: This registration program contains the following elements: A live bird market will ensure that all birds are purchased from flocks that have been tested for LPAI at least quarterly; live bird market personnel will receive biosecurity training, and training records must be available to state and federal animal health official and be maintained in their personnel files; markets are responsible for verifying bird identification and obtaining documentation of negative AI test results for all birds at the time of their receipt and if records are not available, the birds cannot enter the market; and records for avian species, which include their date of entry and premise of origin identification number, must be retained for at least two years. Live bird markets that test positive for any fowl disease reportable to the Commission will undergo mandatory closure, be required to depopulate and undergo cleaning and disinfection of the facility. Before a live bird market can reopen for business, the facility must pass inspection by a State or Federal animal health official and be retested.

All birds provided to a distributor or directly to a live bird market from a production premise must originate from an AI-negative flock. Production facilities and equipment must be clean and sanitary at all times. Categories of production premises and the testing requirements for each category are as follows:

1. LPAI-monitored flocks: Flocks are tested monthly for the virus for at least 3 months before receiving status. Status may be continued so long as the flock is tested negative on a monthly basis.

2. Established flocks: Flocks that have been maintained together for at least 21 days prior to sample collection with no additions to the flock. To qualify for the first shipment or to requalify after any breaks in the monthly sample-testing regimen, 30 birds must be tested within 10 days prior to movement.

3. Commingled flocks: Groups of poultry from multiple sources that have been assembled for one or more shipments. When untested birds are added to the flock, previous test reports are void and the flock must requalify as an established flock. This requires that the birds are tested not less than 21 days after commingling and not more than 10 days prior to movement.

4. Nonmonitored flocks: Those which have not been on a program of monthly testing for at least 3 months. To qualify for sale in the live bird market system, 30 birds in the flock must be tested within 10 days prior to movement.

Birds from production premises may not be sold directly to live bird markets unless the flock owner or manager is also registered as a distributor. In addition to testing regimens, production premises may be subjected to random inspections and testing by State and Federal animal health officials to ensure that their property, conveyances, and coops are clean and sanitary and that records are being kept in accord with program requirements. Flock test records, as well as records of bird transfers, must be maintained for not less than two years. Birds loaded for transportation to a distributor must be identified by premises of origin and must contain an appropriate date or lot number that will distinguish the shipment from others.

This proposal will enhance poultry disease prevention, control and response by requiring that the live bird market system, including transporters and distributors of fowl, register and participate in a disease surveillance program intended to minimize the impact of diseases.

Chapter 54 contains the following:

Section 54.1 is entitled "Definitions" and provides definitions for terms utilized in this chapter. This proposal adds definitions for "Live Bird Marketing Distributor", "Live Bird Market" (LBM), "Live Bird Production Unit" (LBPU), "Live Bird Marketing System" and a Premises Identification Number (PIN).

Section 54.9 is entitled "Live Bird Markets" and provides the mechanisms to obtain compliance for violations of this chapter. There is subsection (a) which contains registration requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors. There is subsection (b) which contains record keeping requirements for: Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors. There is subsection (c) which contains biosecurity requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors. There is subsection (d) which contains inspection requirements. There is subsection (e) which contains Avian Influenza Test Requirements. There is subsection (f) which contains requirements for any LBMS where fowl are positive for a disease reportable to the Commission under Chapter 45 of this Title.

FISCAL NOTE

Ms. Angela Lucas, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. Currently, there are only eleven (11) identified live bird markets in the state and they are already registered under the current registration program. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Ms. Lucas also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated is that the requirement of Live Bird Markets to participate in this program will provide the Commission increased surveillance for a serious disease risk which is more protective for the various fowl industries and the general public.

LOCAL EMPLOYMENT IMPACT STATEMENT

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.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

Chapter 54 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. H.B. 2328 adds to Chapter 161, §161.0411 which authorizes the Commission to register domestic and exotic fowl sellers, distributors, or transporters who do not participate in disease surveillance programs recognized by the Commission. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on cer-

tain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the Commission. Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

Section 161.043, entitled "Regulation of Exhibitions", provides that the Commission may regulate the entry of livestock, domestic animals, and domestic fowl into exhibitions, shows, and fairs and may require treatment or certification of those animals as reasonably necessary to protect against communicable diseases. Section 161.049, entitled "Dealer Records", provides the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. Section 161.056, entitled "Identification of Exotic Animals", provides the commission may adopt rules to establish a standard method for identifying and tracking exotic livestock and exotic fowl. Section 161.081, entitled "Importation of Animals", provides the Commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country as well as the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The Commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits. Section 161.148, entitled "administrative penalty", provides that the Commission may impose an administrative penalty against a person who violates a rule or order adopted under this chapter.

§54.1. Definitions.

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

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

(8) "Live Bird Marketing Distributor"--Any person engaged in sales and/or movement of live domestic or exotic fowl between a production system and a live bird market or fowl market or acquires domestic or exotic fowl from multiple flocks or geographic areas for resale to another person.

[~~(8) "Live Bird Market" (LBM)--Any facility on which live domestic fowl or domestic and exotic fowl are congregated for sale or to be slaughtered and dressed for sale to the public or local restaurants or to be sold live for any purpose.~~]

(9) "Live Bird Market" (LBM)--Any facility on which live domestic fowl or domestic and exotic fowl are congregated to be slaughtered and dressed for sale to the public or local restaurants.

(10) "Live Bird Production Unit"--Any production facility that is the origin of live domestic fowl or domestic and exotic fowl offered for sale in a LBM.

(11) "Live Bird Marketing System"--Any Live Bird Market, Live Bird Marketing Distributor, or Live Bird Production Unit.

(12) [~~(9)~~] "Person"--Any individual, firm, partnership, corporation, estate, trust, fiduciary, or other group or combination acting as a unit.

(13) "Premises identification number" (PIN)--A unique official seven (7) character alpha numeric identification code issued under this chapter to identify a specific and unique premises.

(14) [~~(10)~~] "Seller"--Any person who sells, trades, exchanges or barters domestic or exotic fowl.

(15) [~~(11)~~] "Transporter"--A person that transports, for hire, domestic or exotic fowl from a producer premises to another premises, a live bird market, a fowl market or to another person.

§54.9. Live Bird Marketing System.

(a) Registration/Licensing. Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall submit:

(1) An application including:

(A) Business name and Owner name, address, and telephone number;

(B) Hours of operation;

(C) Bird capacity, which is based on the maximum number of fowl during the previous twelve (12) months, being owned or managed by the registrant at any one time;

(D) Other businesses under the same ownership in the LBM system, including other dealerships, bird transportation businesses, and commercial poultry operations;

(E) A list of all avian and non-avian species distributed; and,

(F) NAIS unique premises identification number.

(2) An annual registration fee as provided in §54.4 of this title (relating to Registration Fee).

(b) Record Keeping. Requirements for Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors:

(1) Are responsible for verifying bird identification, using PIN or Lot identification and maintaining identification and obtaining and maintaining documentation of test-negative status of all birds at the time of their receipt. If records do not accompany the shipment the management is prohibited from allowing those fowl to enter the premises.

(2) Records for avian species shall include the date of entry into a LBM, the premises-of-origin identification number, with lot identifier; the number and species of birds in the lot; the distributor license number; the date of sale and a copy of the negative test results for the source flock.

(3) These records must be maintained for a minimum of two (2) years. Such records must be made available to State or Federal animal health officials, upon request, during normal business hours.

(c) Biosecurity. Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall:

(1) Develop a biosecurity protocol approved by the Commission. This should include standards for cleaning & disinfecting (C&D) of facilities, conveyances, and equipment.

(2) Train all personnel that work for the company in biosecurity by State or Federal personnel or by a trained company representative. Certification of employee training must be maintained in the personnel files for a minimum of two (2) years. Such records must be

made available to State or Federal animal health officials, upon request, during normal business hours.

(3) Once delivered to a market, birds must be slaughtered and processed before leaving the facility, unless otherwise provided for in the biosecurity protocol.

(d) Inspections.

(1) The Commission may make inspections of any facilities, conveyances, and equipment and the domestic or exotic fowl therein and review records to ensure compliance with the requirements of the fowl registration program.

(2) Live Bird Markets, Live Bird Production Units, and Live Bird Market Distributors shall allow State and/or Federal animal health officials to have access to records upon request and to permit official inspections and testing of birds, premises, vehicles, and equipment as deemed appropriate by the Commission.

(3) Indication or evidence that paperwork received has been altered or that it misrepresents the sources or test status of birds coming into the LBM, the LBMS, or distributor must be reported to a Federal or State animal health official.

(e) Avian Influenza Test Requirements. All domestic fowl in a Live Bird Marketing System shall participate in testing for avian influenza virus which shall include but is not limited to using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds:

(1) Live Bird Markets and Live Bird Marketing System distributors shall be tested:

(A) at least quarterly; and,

(B) may include live birds, environment, conveyances, and crates.

(2) All birds provided to a distributor or directly to the LBM must originate from an avian influenza negative flock and must bear or be accompanied by identification to a premises of origin. The categories of production units and the testing requirements for each category are as follows:

(A) AI-monitored flock: This is a flock that is tested monthly for AI for at least 3 months using AGID on serum or egg yolk samples from gallinaceous birds, RRT-PCR on tracheal swabs from gallinaceous birds, or virus isolation on cloacal swabs from waterfowl and other birds. At least 30 birds per flock are tested monthly by an approved laboratory.

(B) Established flock: This is a flock that has been maintained together for at least 21 days prior to sample collection with no additions to the flock. For an established flock to qualify for the first shipment into the LBM system or to requalify after any breaks in the monthly sample-testing regimen, 30 birds must be tested by AGID or other approved procedure within 10 days prior to movement.

(C) Commingled flock: This is a group of poultry from multiple sources that has been assembled for one or more shipments. When untested birds are added to the flock, previous test reports are void and the flock must requalify as an established flock by waiting 21 days before resampling, and then following the protocol as for a nonmonitored flock.

(D) Nonmonitored flock: This is a flock that has not been on a program of monthly testing for at least 3 months. To qualify for sale in the LBM system, 30 birds in a nonmonitored flock must have been tested within 10 days of movement.

(f) Avian Influenza infected flock. Any Live Bird Marketing System where fowl are positive for a disease reportable to the Commission under Chapter 45 of this title (relating to Reportable Diseases):

(1) Any specimens positive for virus will be submitted to the NVSL for virus isolation and characterization. The premises will be movement restricted by a hold order until results are obtained from the NVSL.

(2) If the virus is isolated, the facility will be quarantined until subsequent tests of birds or the environment confirm the disease has been eradicated. Premises will be inventoried. The fowl will be depopulated and the facilities will undergo C&D

(3) RRT-PCR or VI positives at LBMs and distribution facilities will result in trace-backs to a supplier of origin by State or Federal personnel in the State of origin.

(g) Violations of these requirements will be handled as provided in §54.4 of this title (relating to Registration 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 17, 2008.

TRD-200805964
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 719-0700

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.101 - 60.124

The Texas Department of Housing and Community Affairs proposes amendments to 10 TAC, Chapter 60, §§60.101 - 60.124, concerning Compliance Monitoring. The proposed amendments make changes to the existing rule by deleting references to the Affordable Housing Disposition Program (AHDP), changing the definition of substantial construction, revising requirements for utility allowances and annual recertification to reflect recent legislative changes introduced by The Housing and Economic Recovery Act of 2008 (H.R. 3221), further defining Affirmative Fair Housing Marketing requirements, and clarifying supportive service requirements through the use of examples.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended sections as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be the more efficient organization and use of Department resources as a result of providing separate processes for the disposition of Department assets and the assessment and collection of administrative penalties. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed.

Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: TDHCArulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. ALL COMMENTS MUST BE RECEIVED BY DECEMBER 18, 2008.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of he Department and its programs.

The amended sections affect no other code, article, or statute.

§60.101. Purpose and Overview.

(a) This rule satisfies the requirement of §42(m)(1)(B)(iii) Internal Revenue Code (Code) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the Internal Revenue Service of such noncompliance. The Department monitors rental Developments [~~developments~~] receiving assistance under:

(1) the Housing Tax Credit program (HTC);

(2) the HOME Investment Partnerships program (HOME);

(3) the Tax Exempt Bond program (BOND);

(4) the Housing Trust Fund program (HTF); and

(5) the Community Development Block Grant Disaster Recovery Program (CDBG).[~~; and~~]

[~~(6) the Federal Deposit Insurance Corporation's Affordable Housing Program (AHP) (formerly the Resolution Trust Corporation's Affordable Housing Disposition Program).~~]

(b) All properties monitored by the Department are subject to the Department's enforcement rules, found in Subchapter C of this chapter.

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Portfolio Management and Compliance Division (PMC) monitors to ensure Owners [~~owners~~] comply with the program rules and regulations, Chapter 2306, Texas Government Code, the Land Use Restriction Agreement (LURA) requirements and conditions, and representations imposed by the Application or award of funds by the Department. These rules do not address forms and other records that may be required of Development Owners by the Internal Revenue Service (IRS) or other governmental entities [~~more generally~~], whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§60.102. Definitions.

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

(1) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA)[~~,~~] or federal regulation, or commences on the first day of the Compliance Period as defined by §42(i)(1) of the Internal Revenue Code (IRC) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier [~~later~~]. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure. The Department reserves the right to extend the Affordability Period for HOME properties that fail to meet program requirements. During the Affordability Period [~~this period~~] the Department shall monitor to ensure compliance with programmatic rules, regulations, and Application representations.

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

(3) Architect of Record--The architect licensed in the jurisdiction that the project is located in, who prepares, stamps and signs the construction documents, and is legally recorded as the architect for the project.

(4) Board--The governing Board of the Texas Department of Housing and Community Affairs.

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

(6) Compliance Period--With respect to a Housing Tax Credit building, the period of fifteen (15) [~~15~~] taxable years, beginning with the first year of the Credit Period, pursuant to the Code §42(i)(1).

(7) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) [~~12~~] months.

(8) Credit Period--With respect to a Housing Tax Credit building, the period of ten (10) [~~10~~] 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).

(9) Department--The Texas Department of Housing and Community Affairs, an official and public agency of the State of Texas pursuant to Chapter 2306, Texas Government Code.

(10) Development--A property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the Department and that is financed under the provisions of Chapter 2306, Texas Government Code.

(11) Extended Use Period--With respect to a Housing Tax Credit building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement, or

(B) the date which is fifteen (15) [~~15~~] years after the close of the Compliance Period.

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

(13) Housing Quality Standards--The property condition standards described in 24 CFR [Code of Federal Regulations] §982.401.

[(14) Housing Sponsor--Sometimes referred to as "Development Owner." An individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization or cooperative that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing Development, subject to the regulatory powers of the Department and other terms and conditions.]

(14) [(15)] HTC Development--Sometimes referred to as "HTC Property." A Development using Housing Tax Credits allocated by the Department.

(15) HUD--The United States Department of Housing and Urban Development.

(16) HUD-regulated Building--The rents and utility allowances of the building are reviewed by HUD on an annual basis.

(17) Low Income Unit--A Unit that is intended for occupancy by an income eligible household, as defined by the Department or the Code.

(18) Land Use Restriction Agreement or LURA--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of Chapter 2306 of the[,] Texas Government Code,[;] the Code,[;] and the requirements of the various programs administered or funded by the Department.

(19) Material Noncompliance--

(A) A Housing Tax Credit Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system of this title.

(B) Non HTC Developments monitored by the Department with 1 to 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non HTC Developments monitored by the Department with 51 to 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points.

(C) For all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.121 of this chapter to be Material Noncompliance.

(20) Non HTC Development--Sometimes referred to as Non HTC Property. Any Development not utilizing Housing Tax Credits.

(21) Owner--An individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization or cooperative that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing Development, subject to the regulatory powers of the Department and other terms and conditions.

(22) [(21)] Substantial Construction--

(A) The minimum activity necessary to meet the requirements of substantial construction for new construction Developments will be defined as: [1) having building permits, 2) the foundation of all residential buildings and the clubhouse in place 3) 50% of the framing completed and 4) at least 20% of the construction contract amount for the Development expended, adjusted for any change orders, as certified by the inspecting architect.]

(i) completion of the foundation of the clubhouse (if applicable);

(ii) having all permits;

(iii) all grading completed (not including landscaping);

(iv) all major utility transmission infrastructure in place; and

(v) all Right of Way access and one of the following: 100 percent of the foundations in place and 50 percent of the framing completed OR 25 percent of all residential buildings roofed.

(B) The minimum activity necessary to meet the requirement of Commencement of Substantial Construction for rehabilitation Developments will be defined as having: [1) building permits issued or a clearance from the City stating that building permits are not required, 2) a certification that there are no reasonably foreseeable issues or circumstances which may prevent or delay the start and progress of construction or the timely successful completion of rehabilitation and 3) at least 20% of the construction budget expended as documented by the inspecting architect.]

(i) building permits issued or a clearance from the City stating that building permits are not required;

(ii) a certification that there are no reasonably foreseeable issues or circumstances which may prevent or delay the start and progress of construction or the timely successful completion of rehabilitation; and

(iii) at least 20 percent of the construction budget expended as documented by the inspecting architect.

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

(24) [(23)] Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. *Example 101(1):* A [For example, a] two bedroom one bath Unit is considered a different Unit Type than a two bedroom two bath Unit. A three bedroom two bath Unit with 1,000 square feet is considered a different Unit Type than a three bedroom two bath Unit with 1,200 square feet. A one bedroom one bath Unit with 700 square feet will be considered equivalent to a one bedroom, one bath Unit with 800 square feet.

(25) UPCS--Uniform Physical Condition Standards as developed by the Real Estate Assessment Center of the Department of Housing and Urban Development.

§60.103. Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final [final] Construction during the Affordability Period [affordability period], the Department [department] will periodically monitor the De-

velopment [~~development~~] to assure that the initial compliance review was correct.

(b) The Department will not provide any funding to any Development unless the Owner [~~owner~~] certifies that the housing Development is, or will be upon completion of construction, in compliance with the following housing laws:

(1) state and federal fair housing laws, including Chapter 301, Property Code, the Texas Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601, et seq.), and the Fair Housing Amendments of 1988 (42 U.S.C. §§3601, et seq.);

(2) the Civil Rights Act of 1964 (42 U.S.C. §§2000a, et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101, et seq.); and

(4) Section 504, Rehabilitation Act of 1973 (29 U.S.C. §§701, et seq.). (§2306.257)

(c) Evidence of Commencement of Substantial Construction must be submitted no later than the deadline established in the Development's Commitment Notice. Four percent BOND properties are not required to submit evidence of Substantial Construction.

(d) Copies of any construction reports supplied to a syndicator must be supplied to the Department upon request.

(e) Copies of any reports issued during construction that indicate changes that affect the representations made during the Application [~~application~~] process must be supplied to the Department upon request.

(f) Owners are required to submit evidence of construction completion within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development [~~property~~] was built in compliance with all applicable laws.

(g) The Department will conduct a final inspection after receipt of notification of construction completion. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable laws referenced in subsection (b) of this section. In addition, a UPCS inspection may be completed.

(h) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a ninety (90) [~~90~~] day corrective action period will be provided.

(i) Forms 8609 and final retainage will not be released until the Owner [~~owner~~] receives written notice from the Department that all noted deficiencies have been resolved.

(j) During any construction inspection, if the Owner [~~owner~~] and the Department are unable to agree that an identified issue is a violation, the Owner [~~owner~~] must request Alternative Dispute Resolution. The process for engaging ADR is outlined in §60.123 of this chapter.

§60.104. Recording of Land Use Restriction Agreements (HTC Properties).

(a) In general, no credit is allowable for a building unless there is a properly executed LURA in effect at the end of the first year of the Credit Period [~~credit period~~]. A draft of the proposed [~~Requests for a~~] LURA must be provided no later than September 1st of the calendar year in which the Owner [~~owner~~] intends to have it recorded. The Department cannot guarantee that a draft [~~A request for a~~] LURA received after September 1st will be processed in the same calendar year. [~~may not be able to be processed by the Department in the same calendar year.~~]

(b) LURAs [~~Land Use Restriction Agreements~~] will impose the rent and income restrictions identified in the Development's [~~property's~~] final underwriting report.

(c) The Department will not issue Forms 8609 until it receives the original, properly recorded LURA.

§60.105. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. Under special circumstances, the Department may, at its discretion, waive the online reporting requirements where a hardship can be demonstrated. In the absence of a written waiver, all Developments are required to submit reports online.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the property, some or all of the Report must be submitted. The first AOCR is due the second year following the award. For example, if a Development is awarded funds in calendar year 2007, the first report is due in 2009. The AOCR is comprised of 4 sections:

(1) Part A "Owner's Certification of Program Compliance." All Development Owners must annually certify to compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. In addition, Owners [~~owners, with the exception of the FDIC's Affordable Housing Program properties,~~] are required to report on the race [~~racial~~] and ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments [~~ethnic composition~~] of individuals and families applying for and receiving assistance. Housing Tax Credit (HTC) developments [~~properties~~] during the Compliance Period will also be required to provide the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

(2) Part B "Unit Status Report." All Developments must annually report the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations.

(3) Part C "Housing for Persons with Disabilities." The Department must establish a system that requires Owners [~~owners~~] of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The questions on Part C satisfy this requirement. [~~The FDIC's Affordable Housing Properties are not required to submit Part C of the Annual Owner's Compliance Report.~~]

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide the data requested in the Owner's Financial Certification. [~~The FDIC's Affordable Housing Properties are not required to submit Part D of the Annual Owner's Compliance Report.~~]

(c) Parts A, B and C of the Annual Owner's Compliance Report must be provided to the Department no later than March 1st of each year, reporting data current as of December 31 of the previous year (the reporting year). Part D, "Owner's Financial Certification", which includes the current audited financial statements and income and

expenses of the Development for the prior year, must be submitted to the Department no later than the last day of April each year.

(d) Any Development for which the AOCR, Part A, "Owner's Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with this section [these rules]. If Part A is incomplete, improperly completed, or is not submitted by the Development Owner, it will be considered not received and not in compliance with this section [these rules]. The Department will report to the IRS on Form [form] 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this requirement.

(e) Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program. If it appears that the Development [property] is not in compliance based upon the report, the Owner [owner] will be given written notice and provided a corrective action period to clarify or correct the report. If the Owner [owner] does not respond to the notice, the report will be subject to the sanctions listed in subsections (f) and (g) of this section.

(f) If any required section, or sections (Parts A, B, C or D), of the report are not received on or before the deadline for submission specified in subsection (c) of this section, a notice of noncompliance will be sent to the Owner [owner], specifying a corrective action deadline. If the report is not received on or before the corrective action deadline, the Department shall:

(1) For all HTC properties, issue Form [form] 8823 notifying the Internal Revenue Service of the violation.

(2) For all properties, score the noncompliance in accordance with §60.121 of this chapter.

(g) The Department may assess and enforce the following sanctions against an Owner [a Housing Sponsor] who fails to submit the AOCR on or before March 1 of each year. These sanctions will be assessed for multiple, consistent, and/or repeated violations of failure to submit the AOCR by March 1 of each year:[.]

(1) A [Impose a] late processing fee in an amount equal to $1,000;

(2) An [A] HTC Development that fails to submit the required AOCR for three (3) consecutive years [in a row] may be reported to the Internal Revenue Service as no longer in compliance and never expected to comply.

(h) Periodic Unit Status Reports. HOME, Housing Trust Fund, [the FDIC's Affordable Housing Properties] and properties funded under the Department's CDBG Disaster Recovery Program[,] shall provide tenant information provided on Part B, "Unit Status Report," at least quarterly during lease up and until occupancy requirements are achieved. Once the Department determines that all occupancy requirements are met, the Development shall submit the Unit Status Report at least annually and as required by this section.

(i) Developments financed by Tax Exempt Bonds issued by the Department shall report quarterly throughout the Qualified Project Period unless notified by the Department of a change in the reporting frequency.

(j) Owners are encouraged to continuously maintain current resident data in the Department's Compliance Monitoring and Tracking System. Under certain circumstances, such as in the event of a natural disaster, the Department may require all Developments to provide current occupancy data through CMTS [the Department's Compliance Monitoring and Tracking System].

(k) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

§60.106. Record Keeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §60.105 of this chapter and any additional programmatic requirements. HTC Development Owners [Housing tax credit property owners] must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low Income [low income rental] Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must [including the FDIC's AHP is required to] retain [the] records as required by the specific funding program rules and regulations. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) of this section.

(c) HTC records must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building[.] (§1.42-5(b)(2) of the Code).

(d) Retention of records for HOME rental Developments and the CDBG Disaster Recovery program must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including but not limited to the Application, Development [development] costs and documentation, must be retained for at least five years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

§60.107. Notices to the Department.

(a) If any of the events in paragraphs (1) - (3) of this subsection occur, written notice must be provided to the Department within the timeframes as follows:

(1) Any sale, transfer, exchange, of the Development or any portion of the Development. Notification must be provided at least thirty (30) [30] days prior to this event.

(2) The Development suffers in whole or in part a casualty loss. Notification must be provided within thirty (30) [30] days following the event of loss using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster).

(3) Owners of [Tax Exempt] Bond Developments shall notify the Department of the date 10 percent of the Units are occupied and the date 50 percent of the Units are occupied within ninety (90) days of such dates.

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses,

email addresses, and phone numbers) for the Ownership [ownership] entity[,] and management company in the Department's Compliance Monitoring and Tracking System (CMTS). Treasury Regulations require the Department to notify Housing Tax Credit Owners [owners] of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS [owner supplied information in CMTS] to meet this requirement.

§60.108. Determination, Documentation and Certification of Annual Income.

(a) For all programs administered by the Department, annual income shall be determined consistent with the §8 Program [program], using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. At the time of program designation as a low income household, owners must certify and document household income. In general, all low income households must be certified prior to move in.

(b) The Department permits Owners [owners] to use check stubs or other documentation of income and assets provided by the applicant or household in lieu of employment verification forms. It is not necessary to first attempt to obtain an employment verification form as required by the HUD 4350.3.

(c) The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted.

§60.109. Utility Allowances.

(a) The Department will monitor to determine if HTC, BOND [Bond], CDBG, HOME, and HTF properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC buildings, if the residents pay utilities directly to the owner of the building or to a third party billing company, this monthly amount will be considered a mandatory fee. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider must be less than the allowable limit. For Non-HTC buildings, owners may account for utilities paid directly to the owner or to a third party billing company in their utility allowance. Where residents are responsible for some, or all, of the utilities--other than telephone, [and] cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations [regulation]. An Owner [owner] may not change utility allowance methods without [the] written approval from the Department. Any such request must include the Utility Allowance Questionnaire found on the Department's website.

(b) Rural Housing Service (RHS) Buildings or buildings with RHS assisted tenants. [Farmer's Home Administration (FmHA) Buildings or buildings with FmHA assisted tenants layered with any Department program.] The applicable utility allowance for the Development will be determined under the method prescribed by the Rural Housing Service [Farmer's Home Administration] (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(c) HUD-Regulated Buildings [buildings] layered with any Department program. If neither the building nor any tenant in the building receives RHS [FmHA] rental assistance payment, and the rents and the utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated Building [building]), the applicable utility allowance for all rent restricted units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated Buildings.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the following methods:

(1) The utility allowance established by the applicable Public Housing Authority (PHA). The Department will utilize Texas Local Government Code Chapter 392 to determine which PHA is the most applicable to the Development. If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. If an Owner chooses to implement a methodology as described in paragraphs (2), (3), (4), or (5) of this subsection, for units occupied by §8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: http://www.powertochoose.org/_content/_compare/compare.aspx to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must specifically include all "component deregulated charges" for providing the utility service.[, or]

(3) The HUD Utility Model Schedule. A utility estimate can be calculated by using the "HUD Utility Model Schedule" that can be found at http://www.huduser.org/datasets/lihtc/html (or successor URL). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section.

(4) An energy consumption model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location, or

(5) [(3)] An allowance based upon an average of the actual use of similarly constructed and sized Units [units] in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(e) For a Development Owner [development owner] to use the Actual Use Method they must:

(1) provide a minimum sample size of usage data for at least 5 Continuously Occupied Units [continuously occupied units] of each Unit Type or 20 percent [%] of each Unit Type whichever is greater. *Example 109(1):* A Development [property] has 20 three bedroom one bath Units and 80 three bedroom two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data [, data] must be supplied for at least 5 of the three bedroom one bath Units and 16 of the three bedroom two bath Units. If there are less than 5 Units [units] of any Unit Type, data for 100 percent [%] of the Unit Type must be provided.

(2) the following information must be scanned onto a CD and submitted to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the

allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 109(2):* The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2009. The data provided is from February 1, 2008 through January 31, 2009. The Owner must submit the information to the Department no later than March 31, 2009 for the information to be valid. [within 45 days of receipt of the data from the utility provider:]

(A) An Excel spreadsheet listing each unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, [every unit on the property,] the number of bedrooms, bathrooms and square footage for each Unit, the household's move in date, [and] the actual kilowatt usage, [billing history by month] for each Unit [unit] for which data was obtained, and the rates in place at the time of the submission.

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data.

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider.

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider.

(E) Documentation of the current utility allowance used by the Development.

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the following guidelines:

(A) If data is obtained for more than 20 percent [%] or 5 of each Unit Type, all data will be used to calculate the allowance.

(B) If more than twelve (12) [12] months of data is provided for any Unit [unit], only the data for the most current twelve (12) [12] months will be averaged.

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e. kilowatts over the last twelve (12) months by the current rate) [averaging the utility costs] for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom one baths and 12 two bedroom two baths, the data for all 30 Units [units] will be averaged to calculate the allowance for all two bedroom Units.

(D) The allowance will be rounded up to the next whole dollar amount.

(E) If the data submitted indicates zero (0) usage for any month, the data for that unit will not be used to calculate the Utility Allowance.

(4) The Department will complete its evaluation and calculation within ninety (90) [30] days of receipt of all the information requested in paragraph (2) of this subsection. [If the allowance increases, owners must implement the allowance for all rent restricted Units within 90 days of the effective date. The effective date of the new utility allowances is the date of the notice to the owner establishing the new utility allowances computed under this subsection. The allowance calculated using the Actual Use Method will be valid for twelve months.]

(5) For newly constructed Developments or Developments that have units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for units of similar size and construction in the geographic area to calculate the utility allowance. [Once the Actual Use Method is approved for use by the Department, the Development Owner must continue to provide the data listed in paragraph (2) of this subsection on an annual basis. The data must be supplied to the Department within 60 days of the expiration of the previous years' allowance. If the owner is unable to obtain the necessary billing histories from the utility provider in subsequent years, the owner must request permission to change utility allowance methods.]

(f) Effective dates. If the Owner uses the methodologies as described in subsections (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in subsection (d)(5) of this section, if a response is not received by the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must once a calendar year submit copies of the utility estimate to the Department and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office and a ninety (90) day period has elapsed. The back up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) [(f)] Combining Methodologies. With the exception of HUD regulated buildings and RHS [FmHA] buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, [water] gas etc.). For example, if residents are responsible for electricity and gas [water], an Owner [owner] may use the appropriate PHA allowance to determine the gas [water] portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(i) [(g)] Increases in Utility Allowances for Developments with HOME funds. Because [because] the HOME final rule does not provide a grace period for implementing increased utility allowances, changes in utility allowances must be implemented on the published effective date. [All other properties shall implement increases in utility allowances within 90 days of the effective date of the change.]

(j) [(h)] The owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. Records shall be made available at the resident man-

ager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at the convenience of both the apartment owner and tenant.

§60.110. Lease Requirements (HTC and HOME Properties).

(a) For HTC properties, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy for other than good cause of low income households throughout the entire Affordability Period and for three years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME properties, the HOME Final Rule [final rule] prohibits Owners [owners] from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner [owner] must serve written notice to [upon] the tenant specifying the grounds for the action at least thirty (30) [30] days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited[.] (24 CFR §92.253).

(c) The Department does not determine if an Owner [owner] has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND properties must use a lease or lease addendum that requires households to report changes in student status.

§60.111. Income at Recertification (Housing Tax Credit Properties).

(a) Under the Code, HTC Development Owners [owners] elect a minimum set aside requirement of 20/50 or 40/60 (20 percent [%] of the Units [units] restricted to the 50 percent [%] income and rent limits or 40 percent [%] of the Units [units] restricted to the 60 percent [%] income and rent limits). The minimum set aside elected by the Development Owner sets the maximum income and rent limits at the property. The Housing Tax Credit program requires mixed income properties to comply with the Available Unit Rule. Regardless of this section if a household's income exceeds 140 percent of the income limit elected by the minimum set aside, owners must comply with the Available Unit Rule. Many HTC Development Owners [development owners] agreed to lease Units to households with an annual income and rent lower than the maximum limits (for example at the 30 percent [%], 40 percent [%] or 50 percent [%] income and rent limits) established by the minimum set aside election of the Owner. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement. When monitoring, the Department will examine the actual rent and income levels of all tenants to determine if additional rent and income requirements in the LURA are being met. Household income at recertification for the additional occupancy restrictions will be monitored as follows:

(1) [(b)] Households initially designated at the 30 percent [%] income and rent limits. If upon recertification, the household's income exceeds the 30 percent [%] limit,[but remains less than the 40% limit,] the Unit [unit] will continue to meet the 30 percent [%] set aside requirement provided that the Owner [owner] does not charge rent in excess of the 30 percent [%] rent limits.[If upon recertification, the household's income exceeds the 40% limit, but is less than the 50% limit, the unit will continue to meet the 30% set aside requirement provided that the owner does not charge rent in excess of the 40% rent limits. If the household's income exceeds the 50% income limit, the unit no longer meets the 30% set aside requirement.] The household will not be required to vacate the Unit [unit] for other than good cause. The Owner [owner] will not be found in noncompliance provided that when the household moves out, the next available Unit [unit] on the property is leased to a household with an income and rent less than the 30 percent [%] limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC [tax credit] requirements, lease provisions and local tenant-landlord laws.

(2) [(c)] Households initially designated at the 40 percent [%] income and rent limits. If upon recertification, the household's income exceeds the 40 percent [%] limit, [but is less than the 50% limit,] the Unit [unit] will continue to meet the 40 percent [%] set aside requirement provided that the Owner [owner] does not charge rent in excess of the 40 percent [%] rent limits.[If the household's income exceeds the 50% income limit, the unit no longer meets the 40% set aside requirement.] The household will not be required to vacate the Unit [unit] for other than good cause. The Owner [owner] will not be found in noncompliance, provided that when the household moves out, the next available Unit [unit] on the property is leased to a household with an income and rent less than the 40 percent [%] limits. If the household is replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC [tax credit] requirements, lease provisions and local tenant-landlord laws.

(3) [(d)] Households initially designated at the 50 percent [%] income and rent limits (for HTC properties with the 40/60 minimum set aside). If upon recertification, the household's income exceeds the 50 percent [%] income limit, the Unit, [unit] will continue to meet the 50 percent set aside provided that the Owner does not charge rent in excess of the 50 percent rent limits. [no longer meets the Development's additional occupancy restriction.] The household will not be required to vacate the Unit [unit] for other than good cause. The Owner [owner] will not be found in noncompliance[,] provided that when the household moves out, the next available Unit [unit] on the property is leased to a household with an income and rent less than the 50 percent [%] limits. Once the household has been replaced, the rent for the previously qualified Unit may be increased to the limit established by the minimum set aside, subject to applicable HTC [tax credit] requirements, lease provisions and local tenant-landlord laws. [*Example 111.1:* A 100 unit property agreed to lease 10 units to households with an income and rent under the 30% limits. The remaining 90 units are subject to the 60% income and rent limits. Upon recertification, it is determined that one of the 30% households has experienced an increase in income; their re-certified annual income is now between the 40% and 50% income limits. The owner can continue to count this unit towards the 30% set aside provided that the rent charged remains at or below the 40% rent limit.]

(b) [(e)] This section does not apply to households designated at the maximum income and rent limits required by the Code. Nor does this section in any way require a Development to lease more Units [units] under the additional occupancy restrictions than established in the LURA [Land Use Restriction Agreement].

(c) For those properties that are not required to perform recertifications, households will maintain the designation they had at move in. Owners must ensure that lower rent restrictions are adhered to throughout the household's occupancy.

(d) Preservation, HTF, HOME and BOND Developments, with any market units in one or more buildings (as evidenced in

their LURA) must continue to perform annual recertifications of all households residing in program units. Owners of 100 percent low income Developments are not required to perform annual income recertifications. HTC Owners must perform annual income recertifications if the project has any market rate units. For HTC Developments, the election made on Part II of the 8609 will determine if a building is part of a project. HTC Development Owners must submit Forms 8609 with Part II completed. The Department may also require HTC Owners to complete Form 8821 to permit the Department to confirm the elections with the IRS.

(e) For HTC, Preservation, HTF, and/or BOND Developments in which the LURA requires 100 percent of the units to be leased to income eligible families, the following recertification requirements apply:

(1) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self-certification form from each household that reports the number of household members, the age of each household member, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. In addition, the self certification will collect information about student status to establish ongoing compliance under the HTC and BOND programs. The Development must use the Department's *Annual Eligibility Certification* to collect this information and must maintain the certification in all household files.

(2) On 100 percent low income Housing Tax Credit developments, households may transfer to any unit within the same project (as determined on Part II of the 8609 for HTC Developments). On mixed income Housing Tax Credit Developments, households may transfer to any unit within the Development if as of their most recent (re) certification, their income was less than 140 percent of the maximum allowable limit. If the owner of a Housing Tax Credit development elected to treat each building as a separate project, households must be certified and low income to transfer to another building.

(3) Owners must review the *Annual Eligibility Certification* for the following items which would require further action:

(A) Changes in household composition. If members are added to an existing household, Owners must determine eligibility and complete a certification. The new household must be screened for income, assets, and student status and the existing Income Certification form must be updated. Owners must obtain first hand or third party verification of income and assets.

(i) If the Development becomes aware of the additions to households during the year, this action must be taken at the time the new household member moves in; Owners may not wait until the *Annual Eligibility Certification* is completed to take action. The Unit Status Report must be updated to reflect current circumstances as the property becomes aware of changes in household size.

(ii) If all original tenants have vacated the unit, the remaining tenants must be certified as a new income-qualified household unless the tenants were income qualified at the time of move in. HTC Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(B) Student status. Developments must use a lease addendum (or incorporate into their lease) a requirement for households to report changes in student status. If at any time the household reports a change in student status or discloses a change on the *Annual Eligibility Certification* form, the Owner must determine if the household is still eligible under the program. If the household meets one of the exceptions, documentation supporting eligibility must be gathered and retained in the lease file. Units in noncompliance will be reported to the IRS on Form(s) 8823 and/or scored in the Department's Compliance Status System as applicable.

(4) Failure to complete the *Annual Eligibility Certification* and maintain the form in household files will result in an issue of noncompliance that will be scored as shown in Figure: 10 TAC §60.121(l) under "Failure to maintain or provide Annual Eligibility Certification". No Form(s) 8823 will be filed with the IRS for the noncompliance.

(5) If a 100 percent low income Development continues to complete full recertifications, the *Annual Eligibility Certification* form must still be completed and the Unit Status Report must be updated at the completion of the recertification. The Department will not review the recertification paperwork during monitoring visits unless noncompliance is identified with the initial certification.

(f) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.252 and §92.203 of the HOME Final Rule, the following recertification requirements apply:

(1) Once every calendar year, the Development must collect a self-certification form from each household that reports the household's income, number and ages of household members, student status, disability status, monthly rental assistance amounts received (if any), and race and ethnicity. The Development must use the Department's *Income Certification* form to collect this information and must maintain the certification in all household files. Failure to complete the *Income Certification* and maintain the form in household files will result in an issue of noncompliance that will be scored as shown in Figure: 10 TAC §60.121(l) under "Owner failed to maintain or provide Annual Eligibility Certification".

(2) HOME Developments must also complete full recertifications of each HOME Unit in every sixth year of the Development's Affordability Period. *Example 111.1:* A HOME property with an affordability period beginning in 2010 must perform full recertifications of all HOME households in 2015. All households must be re-certified, even households that moved in during 2014. Full recertifications at any other time are not required unless, the household self reports an annual income in excess of the 80 percent Area Median Income or as stated in 24 CFR §92.252, there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income or the property has otherwise been directed to institute full recertifications by the Department.

§60.112. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with §2306.269 and §2306.6728, Texas Government Code, regarding residents receiving rental assistance under §8, United States Housing Act of 1937 (42 U.S.C. §1437F).

(b) The policies, standards, and sanctions established by this section apply only to:

(1) multifamily housing Developments that receive the following assistance from the Department on or after January 1, 2002[:] (§2306.185):

(A) a loan or grant in an amount greater than 33 percent [%] of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33 percent [%] of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;[.]

(3) housing Developments that benefit from the incentive program under §2306.805 of the Texas Government Code;[.]

(4) housing Developments that receive funding from the HOME program (24 CFR §92.252(d)).

(c) Owners [Housing Sponsors] of multifamily rental housing Developments described in subsection (a) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the HOME Tenant Based Rental Assistance Program or the housing choice voucher program under §8, United States Housing Act of 1937 (42 U.S.C. §1437f); and

(2) 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's or family's share of the total monthly rent payable to the Owner [owner] of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding $2,500 per year.

(d) To demonstrate compliance with this section, Owners [Housing Sponsors] shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly, (rental, credit, and/or criminal history) including employment policies, [uniformly] and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing plan must be provided to the property management and onsite staff. Owners [Housing Sponsors] are encouraged to use HUD Form 935.2A, [935.2] or successors as applicable. The Affirmative Marketing Plan must identify the following: [methods to market the property to persons with disabilities. Additionally, the Affirmative Marketing Plan must be displayed in the leasing office and available to the public on request.]

(A) Which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the property will market to, factors such as the characteristics of the housing's market area should be considered. *Example 112.1:* An Owner obtains census data showing that 6.5 percent of the city's total population identify as Asian Americans. However, the Owner's demographic data for the Development shows that zero (0) Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach.

(B) Procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s)). *Example 112.2:* An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired.

(C) How the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five years to fully capture demographic changes in the housing's market area.

(D) Records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 112.3:* The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts will result in a finding of noncompliance.

§60.113. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA [Land Use Restriction Agreement], whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low income Development. The Department will conduct:

(1) the first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service.

(2) the first review of all other Developments as leasing commences.

(3) [a] subsequent reviews at least once every three years during the Affordability Period.

(4) a physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units.

(5) limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided).

(c) The Department will perform onsite file reviews and monitor:

(1) a sampling of the low income resident files in each Development, and review the income certifications,

(2) the documentation the Development Owner has received to support the certifications,

(3) the rent records and any additional information that the Department deems necessary.

(d) At times other than onsite [on site] reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(e) The Department will select the Low Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§60.114. Monitoring for Social Services.

(a) If a Development's LURA [property's Land Use Restriction Agreement] requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will [may] be reviewed during onsite visits and [or] must be submitted to the Department upon request. *Example 114.1:* The Owner's LURA requires provision of on-site daycare services. The Owner maintains daily sign in sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services.

(b) Supportive services must be provided throughout the entire Affordability Period, beginning once the Development completes lease up after final construction or acquisition. If an Owner [owner] wishes to change the scope of services provided, prior approval from the Department is necessary. The Department, upon review of the Owner's request and the Development's original application, may also require the Owner to submit a proposed amendment to the LURA. It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

§60.115. Monitoring for Non-Profit Participation or HUB Participation.

(a) If a Development's LURA [property's Land Use Restriction Agreement] requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm this requirement is being met throughout the development phase and ongoing operations of the property. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB is materially participating. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner [owner] wishes to change the non-profit, or HUB, prior approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners [owners] to certify to compliance with this requirement. Failure to comply with the requirements of this section shall result in a finding of noncompliance. In addition, the Internal Revenue Service will be notified if the non-profit is not materially participating on a Housing Tax Credit property during the Compliance Period.

(c) The Department does not enforce partnership agreements or determine equitable fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction.

§60.116. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary [and] in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local heath, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) Housing Tax Credit Development Owners [property owner] are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the following manner:

(1) A finding of Major Violations will be cited if:

(A) [uncorrected] life threatening health, safety, or fire safety hazards [(other than smoke detectors and blocked egresses which are addressed in subsection (d) of this section)] are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development [in any building exterior, building system, common area, site, or dwelling Unit];

(B) 20 percent of the violations noted are level three deficiencies other than level three deficiencies reported on the Notification of Exigent and Fire Safety Hazards Observed form and corrected in the seventy-two (72) hour limit [% or more of buildings or dwelling Units inspected have any level three violation]; or

(C) an overall UPCS score of less than 60 percent [%] (59 percent [%] or below) is reported.

(2) A finding of Pattern of Minor Violations will be assessed if:

(A) 20 percent of the violations noted are level two deficiencies [% or more of the buildings or dwelling Units inspected have any level two violation]; or

(B) An overall score between 60 percent [%] and 79 percent [%] is reported.

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

[(d) Owners are ultimately responsible for compliance. However, the Department recognizes that despite an owner's effort to comply, residents may disable smoke detectors or arrange their furniture in a manner that blocks a fire egress. If inoperable smoke detectors or resident caused blocked egresses are noted during the UPCS inspection, they will not be taken into consideration for the purposes of the Department's evaluation of the report provided that the Department is

~~notified of the correction within 72 hours. If the owner fails to notify the Department of the correction of inoperable smoke detectors and/or blocked egresses within 72 hours the property will be considered to have Major violations of the Uniform Physical Condition Standards.~~]

(d) [~~(e)~~] The Department is required to [~~must~~] report to the Internal Revenue Service on Form [~~form~~] 8823 any HTC Development that [~~property~~] fails to comply with any [~~the~~] requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses). Accordingly, the Department will submit Form(s) [~~forms~~] 8823 for any UPCS violation. However, if the violation(s) do not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development [~~property~~]. Non HTC properties that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) in this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of repair within the ninety (90) day corrective action period.

[~~(f) Property representatives will have the opportunity and are encouraged to correct deficiencies while the inspector is on site. Such corrected items will not be assessed a finding unless there is a pattern of the same violation (25% or more of dwelling Units or buildings inspected with the same deficiency).~~]

(e) [~~(g)~~] Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation includes work orders, photographs, and/or invoices to third party repair specialists) [~~the violation has been corrected~~].

(f) [~~(h)~~] The Department will provide a ninety (90) [~~90~~] day corrective action period to respond to a notice of noncompliance for violations of the Uniform Physical Condition Standards. The Department will grant up to an additional ninety (90) [~~90~~] day extension if there is good cause and the Owner [~~owner~~] clearly requests an extension.

[~~(i) The FDIC's Affordable Housing Program does not establish a specific set of property standards that owners must meet. Therefore, the Department cannot conduct physical assessments of the FDIC's Affordable Housing Properties. However, if the Department discovers that an owner is not adequately maintaining the physical condition of the property, the Department may request the owner make corrections and/or inform the local housing inspector. In addition, if the Department is notified by a local code enforcement entity that an Affordable Housing Property is not in compliance with local health, safety and building codes, the Department will notify the FDIC and cooperate with any enforcement activities requested by the FDIC.~~]

(g) [~~(j)~~] 24 CFR § [~~Section~~] 92.251 of the HOME Final Rule [~~final rule~~] requires rental property assisted with HOME funds to be maintained in compliance with all local codes and Housing Quality Standards (24 CFR §982.401). To meet this requirement, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. The Department will review HQS inspection sheets for all units for compliance with this requirement during onsite monitoring visits.

§60.117. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the AOCR or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the IRC. Owners may request that results of monitoring reviews be emailed if all email addresses in CMTS are up to date. If Owners request such notices be sent by email, a paper copy will not be mailed by the Department. The notice will specify a correction period of ninety (90) [~~90~~] days from the date of notice to the Development Owner, during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply any missing documentation or certifications. The Department may extend the correction period for up to six months from the date of the notice to the Development Owner if there is good cause for granting an extension. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Current Contact Information to the Department).

§60.118. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC [~~housing tax credit~~] program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, such as utilities paid to the owner, cannot exceed the maximum applicable limit (as determined by the minimum set aside elected by the Owner [~~owner~~]) published by the Department. If it is determined that a HTC Development [~~Housing Tax Credit property~~], during the Compliance Period, collected rent in excess of the rent limit established by the minimum set aside, the Department will report the violation as corrected on the date that the rent plus the utility allowance, plus fees, is less than the applicable limit. The refunding of overcharged rent does not avoid the disallowance of the credit by the Internal Revenue Service.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner [~~owner~~] agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner [~~owner~~] to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 118(1):* For Internal Revenue Code §42 purposes, the maximum allowable limit is [~~in~~] 60 percent [~~%~~]. However, the Owner [~~owner~~] agreed to lease some Units [~~units~~] to households at the 30 percent [~~%~~] income and rent limits. It was discovered that the 30 percent [~~%~~] households were overcharged rent. The Owner [~~owner~~] will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that

the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Form(s) 8823. The noncompliance will be corrected on the later of January 1st of the next year or as of the date the application fee is reduced and evidence of a reduced application fee is supplied to the Department. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year or until the application fee is reduced.

(d) [(c)] Rent or Utility Allowance Violations on Non Housing Tax Credit properties. If it is determined that the property collected rent in excess of the allowable limit, the Department will require the Owner [owner] to refund to the affected residents the amount of rent that was overcharged. [The issue will be considered corrected on date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is less than the applicable limit.]

(e) [(d)] Trust Account to be established. If the Owner [owner] is required to refund rent under subsection (b) or (d) [(c)] of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for a four (4) year period, [or] until all funds are claimed, or for four (4) years. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) [(e)] Rent Adjustments for HOME properties. 24 CFR § [Section] 92.252 of the HOME Final Rule requires Owners [owners] to charge households with an income in excess of 80 percent [%] at recertification, a rent equal to the lesser of 30 percent [%] of the household's adjusted income or the market rent for comparable unassisted Units [units] in the neighborhood. If at recertification the household self certifies an income in excess of the 80 percent limit, documentation of all income, assets and allowable deductions must be obtained by the owner. The Department will find a HOME property in noncompliance with this section if the Owner [owner] fails to determine the over income household's adjusted income and [or] maintain documentation of market rents for comparable unassisted Units in the neighborhood.

(g) [(f)] Special conditions for CDBG properties. To determine if a Unit [unit] is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

§60.119. Notices to the Internal Revenue Service (HTC Properties).

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) [45] days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. The Department will retain the AOCRs and records for three years from the end of the calendar year the Department receives the certifications and records.

(c) The Department will send the Owner [owner] of record copies of any IRS Form(s) [Forms] 8823 submitted to the IRS. Copies of Form(s) 8823 will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development Owner is responsible for providing the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

§60.120. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) Housing Tax Credit properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record a LURA restricting the property for at least thirty (30) [30] years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor Housing Tax Credit Developments using the rules detailed in paragraphs (1) - (12) [(13)] of this subsection.

(1) On site monitoring visits will continue to be conducted approximately every three years, unless the Department determines that a more frequent schedule is necessary;

(2) In general, the Department will review 10 percent [%] of the low income files. No less than 5 files and no more than 20 files will be reviewed;

(3) The exterior of the property, all building systems and 20 percent [%] but no more than 35 of the Development's Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(4) Each Development shall submit an annual report in the format prescribed by the Department;

(5) Reports to the Department must be submitted electronically as required in §60.105 of this chapter;

(6) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(7) All households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program;

(8) Rents will remain restricted for all Low Income Units. After the Compliance Period, utilities paid to the owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit;

[(9) Owners and managers must continue to screen households for income, assets, and household size on an annual basis. In addition, an Income Certification form must be completed on an annual basis;]

(9) [(10)] All additional income and rent restrictions defined in the LURA remain in effect;

(10) [(11)] Other requirements defined in the LURA, such as the provision of social services or serving special needs households, will remain in effect;

(11) [(12)] The Owner [owner] shall not terminate the lease or evict low income residents for other than good cause [the resident or refuse to renew the lease except for Material Noncompliance with the lease or other good cause]; and

(12) [(13)] The total number of required Low Income Units must be maintained Development wide.

(c) After the first fifteen (15) [15] years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (3) [(4)] of this subsection.

[~~(1) At recertification verification of income and assets will not be required;~~]

(1) [~~(2)~~] The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low Income Unit;

[~~(3) The Available Unit Rule found in Treasury Regulation §1.42-15; and~~]

(2) [~~(4)~~] The building applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building; and[~~.~~]

(3) Household transfers between buildings restricted by §42(g)(1). All households, regardless of HTC income level designation, will be allowed to transfer between buildings with the Development.

(d) Unless specifically noted in this section, all requirements of this chapter and §42 of the Internal Revenue Code remain in effect for the Extended Use Period. These Post Year 15 Monitoring Rules apply only to the Housing Tax Credit Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§60.121. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the noncompliance limit for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner [~~owner~~] has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never [~~property never was~~] in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Department. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form [~~form~~] 8823. Those events that are reportable under the HTC [~~Housing Tax Credit~~] program on Form [~~form~~] 8823 are so indicated in subsections (k) and (j) of this section.

(d) For HTC [~~Housing Tax Credit~~] Developments, all Forms [~~forms~~] 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms [~~forms~~] 8823 issued prior to [~~the development of~~] January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Applicant regarding noncompliance events; however, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department are scored even if the Development no longer actively participates in the program, with the exception of properties in the FDIC's Affordable Housing Disposition Program.

(g) A Development's score will be reduced by the number of points needed to be one point under the Material Noncompliance threshold provided that [~~under the following circumstances~~]:

(1) The Development has no previously reported [~~uncorrected~~] noncompliance events that are uncorrected, [~~and~~]

(2) All newly identified noncompliance events are [~~were~~] corrected during the corrective action period, [~~and~~]

(3) All corrective action documentation for the newly identified noncompliance is [~~was~~] provided to the Department during the corrective action period, and[~~.~~]

(4) The Development was not already in Material Noncompliance at the time of its most recent monitoring review.

(h) Noncompliance events are categorized as either "Development events" or "Unit/building events." Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units are in noncompliance.

(i) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score three years after the date the noncompliance was reported corrected by the Department.

(j) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsection (k) of this section.

(k) Figure: 10 TAC §60.121(k) lists events of noncompliance that affect the entire Development [~~development~~] rather than an individual Unit [~~unit~~]. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. Material Noncompliance for a HTC Development [~~property~~] is 30 points. Material Noncompliance for a non HTC property with 1 to 50 low income units is 30 points. Material Noncompliance [~~noncompliance~~] for a non HTC property with 51 to 200 Low Income Units is 50 points. Material Noncompliance for non [~~Non~~] HTC properties with 201 or more Low Income Units [~~low income units~~] is 80 points. The third column lists the number of points assigned to this event when the issue is corrected until three years after correction. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form [~~form~~] 8823 for HTC Developments [~~Housing Tax Credit properties~~].

Figure: 10 TAC §60.121(k)

(l) Figure: 10 TAC §60.121(l) lists 10 events of noncompliance associated with individual Units [~~units~~]. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. Material Noncompliance for a HTC property is 30 points. Material Noncompliance for a non HTC property with 1 to 50 low income units is 30 points. Material Noncompliance [~~noncompliance~~] for a non HTC property with 51 to 200 Low Income Units is 50 points. Material Noncompliance for non [~~Non~~] HTC properties with 201 or more Low In-

come Units [low income units] is 80 points. The third column lists the number of points assigned this event when the issue is corrected until three years after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form [form] 8823 for HTC Developments [Housing Tax Credit properties].

Figure: 10 TAC §60.121(l)

§60.122. Previous Participation Reviews.

(a) Prior to providing any Department assistance, executing a Carryover Allocation Agreement, or processing a request for a Qualified Contract, the Portfolio Management and Compliance Division will conduct a previous participation review to determine if the requesting entity owes the Department any fees, has any outstanding audit issues or any uncorrected issues of noncompliance. Assistance includes but is not limited to allocating any Department funds, permitting the transfer of Ownership [ownership] of a property, engaging in loan or contract [or LURA] modifications, and providing incentive awards.

(b) HTC Developments with any uncorrected issues of noncompliance will not be issued Form 8609s, Low Income Housing Credit Allocation Certification, until the noncompliance is corrected.

(c) [(b)] If during the previous participation review an uncorrected issue of noncompliance is identified on a HOME Development monitored by the Department, the entity requesting assistance will be notified of the issue and provided a 5 day period to submit all necessary corrective action to cure the violation(s). The notification will be in writing and may be delivered by email. If the requesting entity does not cure the issues, the Application for assistance will be terminated. If the Application [application] is terminated, the applicant has the ability to appeal as provided [provide] in §1.7 of this title.

(d) [(c)] If during the previous participation review, the Department determines that the requesting entity has control of an existing Development monitored by the Department that is in Material Noncompliance, the Application for assistance will be terminated.

(e) [(d)] If during the previous participation review, the Department determines that the requesting entity is on the Department's or the Department of Housing Urban Development's debarred list, the Application for assistance will be terminated.

(f) [(e)] In accordance with §2306.057 of the Texas Government Code, the Board shall fully document and disclose any instances in which the Board approves a project Application despite any noncompliance associated with the project, applicant, or affiliate. If an Application is terminated because of the Previous Participation Review, the applicant may appeal the decision in accordance with §1.7 or §1.8 of this title.

(g) [(f)] Treatment of previously owned Developments during a Previous Participation review:

(1) The Department will not take into consideration the score of a Development transferred by the applicant over three years ago.

(2) The Department will not take into consideration the score of a Development whose Affordability Period ended over three years ago.

(3) The Department will not take into consideration scores attributed to Developments for noncompliance with FDIC's Affordable Housing Disposition Program.

(4) [(3)] If the Development [property] was transferred less than three years ago, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the applicant's period of Ownership [ownership]. If the points associated with the noncompliance events identified during the applicant's period of Ownership [ownership] exceed the threshold for Material Noncompliance, the Application will not be recommended.

(h) [(g)] Date for determining of Material Noncompliance. For HTC Applications, the score in effect on May 1st of the year the HTC Application is submitted will be used. For Carryover Allocations, the score in effect on October 1st of the year the award is being made will be used. For all other requests for assistance, the score in effect the day of Previous Participation Review is being conducted will be used.

§60.123. Alternative Dispute Resolution (ADR).

(a) It is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(b) In all phases of monitoring, (construction and throughout the entire Affordability Period) if a potential issue of noncompliance has been identified, Owners [owners] will be provided a written notice of noncompliance. The Department will provide up to a ninety (90) [90] day corrective action period which can and will be extended for an additional ninety (90) [90] days if there is good cause and the Owner [owner] requests an extension.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner [owner] does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner [owner] does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e. for HTC properties, Form(s) [form] 8823 will not be filed with the Internal Revenue Service and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's [owner's] response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner [owner] in writing of their right to engage in ADR. The Owner [owner] must respond in five (5) [5] days and request ADR. In addition, the owner must request an extension of the corrective action deadline, if one is still available. If the owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form [form] 8823 within forty-five (45) [45] days after the end of the corrective action period. Therefore, it is possible that the Owner [owner] and Department may still be engaged in ADR. In this circumstance, the Form [form] 8823 will be filed. However, it will be sent to the IRS with an explanation that the owner disagrees with the Department's assessment and is pursuing ADR. All Owner [owner] supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

§60.124. Liability.

Compliance with the program requirements, including compliance with §42 of the IRC, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the IRC, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

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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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DISCOUNT HEALTH CARE CARD PROGRAM

16 TAC §84.70, §84.73

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code §84.70 and §84.73, regarding the Discount Health Care Card Program.

Effective September 1, 2007, the 79th Legislature, Regular Session, 2007, gave regulatory authority to the Department over the discount health care card program industry. As of September 1, 2008, 27 Discount Health Care Card Program Operators ("program operators") have registered in the state, and these program operators have more than 2.8 million active members in Texas. Accordingly, the Department estimates that this industry generates revenues of approximately $1 billion per year in Texas.

Health and Safety Code, Chapter 76 ("the statute") currently requires program operators to register annually with the Department in order to do business in Texas. Program operators may sell their discount health care card programs directly to consumers or they may contract with marketers to solicit and sell these programs. Many of the program operators contract with marketers to sell these discount health care card programs; however, the statute does not give authority to the Department to register and regulate these marketers. Instead, the program operators are responsible for the activities of their marketers.

As a result of this regulatory structure, there has been confusion for Texas consumers about which program operator is behind a particular program or is responsible for the activities of particular marketers. Consumers may only know the name of the marketer selling the discount health care card program, and the written materials they may have received do not identify the program operator. These rule amendments are necessary to address issues associated with program operators' marketing and membership materials.

Health and Safety Code §76.053 and §76.054 require program operators to provide certain information to consumers. The rules also require program operators to provide to consumers written materials that contain certain disclosures and information. Section 84.70 adds a new subsection (c), which requires the name of the discount health care card program operator to be clearly and conspicuously identified on all discount health care card program materials used by the program operator or its marketers, including but not limited to membership cards. Membership cards are the tangible proof that consumers will carry with them and will show to providers to obtain discounts on health care services. The health care providers review the membership cards to determine which program operator is behind a particular program and whether or not the health care provider has a contract with that program operator or is part of a network of health care providers that has a contract with that program operator to provide services at a discount.

Health and Safety Code §76.052 prohibits advertising that is false or misleading; however, under the statute, program operators may use marketers to sell their programs or may allow marketers to private label the programs, and many do. Because of this business practice, it is often not clear in the advertising materials who the program operator is. The materials may identify the marketer's name or the private label name of the program, but they may not identify the name of the entity that is ultimately responsible for the discount health care card program and that is required to be registered with the Department.

The amendments to §84.73 add a new subsection (c), which requires all discount health care card program advertising to clearly and conspicuously identify the program operator, even if the program is being promoted by a marketer or if the program has a private label name. This requirement applies regardless of the form of the advertising and regardless of who disseminates or distributes the advertisement.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be that consumers who receive advertising materials or solicitations for a discount health care card program or who become members of a discount health care card program will know which program operator is responsible for the program. Because discount health care card programs operators often use marketers to sell their programs and because these programs can have private label names for use by a marketer or for a particular entity (e.g., an employer, an university alumni group, or a trade or business association), it is often not clear who is ultimately responsible for offering the discount or for setting up the agreements with providers or provider networks.

In addition to consumers, the changes will also benefit health care service providers whose patients present discount health care cards when they seek health care services and benefits. By requiring all program materials including membership cards to identify the registered program operator, providers will know which program operator is responsible for the program, whether

or not the health care provider has a direct contract with that program operator or is part of a health care provider network that has a contract with the program operator, and what the amount of the discount will be on the health care service or benefit.

The taxpayers will also benefit in that the Department will reduce the time and resources needed to investigate complaints, where complainants cannot identify who the program operator is by looking at the program materials or the membership card and where all they know is the name of the marketer who sold or attempted to sell them the program.

There will be no disparate economic effect on small or micro-businesses or to persons who are required to comply with the rules as proposed. As of September 1, 2008, there were 27 program operators registered in Texas. The Department has researched these program operators to determine whether or not any of these entities would be considered small or micro-businesses. The Department has identified the number of states that each operator does business in, the number of marketers each operator has contracted with to sell these programs, the number of members enrolled in each operator's program(s), and the enrollment and membership fees charged per member by each operator. Based on this research, the Department has determined that none of the registered program operators would qualify as a small or micro-business. In addition, based on the revenue that is generated by each program operator and the number of program operators who already identify themselves on membership and marketing materials, the Department anticipates very minimal costs to all program operators who are required to comply with the proposed amendments.

Since the agency has determined that the rule will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 76, both of which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 76. No other statutes, articles, or codes are affected by the proposal.

§84.70. Responsibility of the Registrant--General.

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

(c) A discount health care card program operator shall clearly and conspicuously identify itself on all discount health care card program materials that are used by the program operator or its marketers, including membership cards.

§84.73. Responsibility of the Registrant--Statements, Representations, and Advertising.

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

(c) All discount health care card program advertising, regardless of the form, the method, or the source of the dissemination, must clearly and conspicuously identify the program operator. This includes discount health care card program websites.

(d) [(c)] The department may examine the marketing materials of the program operator or its marketers for compliance with this section and may require the program operator and its marketers to make corrections the department 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 17, 2008.

TRD-200805955
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 463-7348

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§5.8 - 5.10

The Texas Higher Education Coordinating Board proposes new §§5.8 - 5.10 concerning Uniform Grade Point Average Calculation. Specifically, the new §5.8 concerning Uniform Grade Point Average Calculation will establish a standard method for computing a student's high school grade point average. The method must be based on a four-point scale and give additional weight to more rigorous courses. The new §5.9 concerning the Conversion Chart for the Uniform Grade point Average will establish the mathematical equivalences for the standard method for computing a student's high school grade point average established by §5.8. The new §5.10 will establish the time-table for the implementation of §5.8.

Dr. Judith Loredo, Assistant Commissioner for P-16 Initiatives, has determined that for each year of the first five years the section is in effect, there will be slight fiscal implications to state or local government as a result of enforcing or administering the rules. The fiscal note to House Bill 3851, 80th Legislature Regular Session (2007) indicated that "given the complexity and variety of methods of calculating high school grade point average, it is assumed that school districts would likely incur some cost in conforming to an adopted methodology. Anticipated costs would include modification of local procedures and software." The rules are not, however, expected to affect any local economy.

Dr. Loredo has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be increased student success and graduation from general academic teaching institutions. There is no effect on small businesses as noted, there are slight economic costs to entities required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Natalie Coffey, Senior Program Director, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or natalie.coffey@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §51.807, which requires the Coordinating Board to adopt rules establishing a standard method for computing a student's high school grade point average.

The new sections affect Texas Education Code, §51.807.

§5.8. Uniform Grade-Point Calculation for Admission to General Academic Teaching Institutions.

Procedures for calculating the high school grade-point average for students seeking admission to a Texas general academic teaching institution shall be as follows:

(1) Only official high school transcripts shall be accepted by the general academic teaching institution for evaluation and grade-point calculation.

(2) A four-point scale shall be used in computing the Uniform Grade-Point Average (GPA) with the exception of paragraph (7) of this section.

(3) No grade points shall be awarded for courses that do not result in credit awarded.

(4) Grades from the following courses regardless of when taken, shall be used in calculating the Uniform Grade-Point Average: Courses including electives in Texas Administrative Code §74.63(b)(1) - (6) and (8) - (11) of this title (relating to Recommended High School Program); all College Board Advanced Placement (AP) and International Baccalaureate (IB) courses in all disciplines; high school career and technology courses aligned with university programs of study as determined by the GPA Advisory Committee established by §5.10(c) of this chapter (relating to Implementation of Uniform Grade-Point Average Rules); and dual credit courses including career oriented courses in the Lower Division Academic Course Guide Manual (ACGM).

(5) Grades earned in local credit courses (Texas Education Code, §28.002(f) shall not be included in the computation of the Uniform Grade-Point Average; and

(6) Grades from out-of-state academic courses equivalent to those in paragraph (4) of this section shall be included in the computation of the Uniform Grade-Point Average if state credit toward the Recommended or Distinguished High School Program is awarded for them.

(7) Courses shall be weighted in the following manner:

(A) Advanced Placement (AP), International Baccalaureate (IB), and Dual Credit courses set forth in paragraph (4) of this section shall be weighted equally with an additional weighting of 1.0 point in the calculation of the Uniform Grade-Point Average.

(B) Pre-AP, Honors, and Pre-IB courses in paragraph (4) of this section that are natural precursors to AP and IB courses shall be weighted with an additional weighting of .50 if begun prior to May 1, 2013.

(C) If begun on or after May 1, 2013, all Pre-AP and Honors courses will be expected to meet Laying the Foundation, or comparable standards. Pre-IB courses will be expected to be part of an approved IB program. In addition, continued weighting for Pre-AP, Honors, and Pre-IB courses will be reviewed by the GPA Advisory Committee established by §5.10(c) of this chapter as appropriate.

(8) The Uniform Grade-Point Average shall be computed for use by the general academic teaching institution:

(A) By multiplying each grade (see paragraph (4) of this section) by the credits earned per course and totaling the products, and

(B) The total of the products shall be divided by the total credits.

(C) The result is to be calculated to no more than three decimal places, giving the official cumulative Uniform Grade-Point Average.

§5.9. Conversion Chart for Uniform Grade Point Average.

The following conversion chart shall be used in the calculation of grade point averages pursuant to §5.8 of this chapter (relating to Uniform Grade-Point Calculation for Admission to General Academic Teaching Institutions):
Figure: 19 TAC §5.9

§5.10. Implementation of Uniform Grade-Point Average Rules.

(a) The rules for calculation of the Uniform Grade-Point Average established under §5.8 of this chapter (relating to Uniform Grade-Point Calculation for Admission to General Academic Teaching Institutions) shall apply to the calculation of such averages for all students who enter the ninth grade for the first time from May 1, 2009, onward.

(b) The grade-point averages of students already in ninth grade or higher as of April 30, 2009, or before, shall be calculated on the same basis that would have applied to such students before the adoption of §5.8 of this chapter.

(c) The Coordinating Board will establish a 15-member Grade-Point Average (GPA) Advisory Committee according to §1.6 of this title (relating to Advisory Committees), which will include representatives from public education, higher education and the workforce sectors, to oversee implementation of the GPA standards and to monitor the courses counted in the GPA calculation as curricula in high schools and universities change. Additionally, the GPA Advisory Committee will be responsible for ensuring institutional compliance with Coordinating Board rules e.g., §4.85 of this title (relating to Dual Credit Requirements) which specify requirements for dual credit courses. The GPA Advisory Committee will advise the Board on each of the referenced areas so that appropriate action may be taken when necessary.

(d) Public institutions of higher education offering dual credit courses will be required to monitor the rigor of the courses offered to high school students and adhere to rules and standards adopted by the Texas Higher Education Coordinating Board.

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

Filed with the Office of the Secretary of State on November 17, 2008.

TRD-200805951

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 29, 2009
For further information, please call: (512) 427-6114

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.55

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.55, concerning Definition of Acronyms.

The amendment to §501.55 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 the rules will follow the Model Rules of the Uniform Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§501.55. Definition of Acronyms.

The following acronyms, when used in Title 22, Part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings:

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

(6) "SEC" means the United States Securities and Exchange Commission;[.]

(7) "TSCPA" means the Texas Society of Certified Public Accountants;

(8) "NCCPAP" means the National Conference of CPA Practitioners;

(9) "NPRC" means the National Peer Review 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 13, 2008.

TRD-200805940
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

The amendment to §501.90 will put licensees on notice that the Board believes that in addition to making deceitful or misleading statements to their clients they should not be making misleading or deceitful statements to the Board, its staff, or the Board's consultants hired to assist in the investigation.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 continued integrity by CPA's to the Board, its staff and consultants.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§501.90. Discreditable Acts.

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) - (11) (No change.)

(12) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(13) - (16) (No change.)

(17) breaching the terms of an agreed consent order entered by the board [~~Board~~] or violating any Board Order.

(18) (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 13, 2008.

TRD-200805927
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS
22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52, concerning Recognized Colleges and Universities.

The amendment to §511.52 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 a clearer understanding of the eligibility requirements to become a CPA and the new eligibility standards will assure that licensees are qualified.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses be-

cause the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§511.52. Recognized Colleges and Universities.

(a) In considering the qualifications of an applicant, the board shall generally accept colleges or universities which offer a baccalaureate or higher degree, and which are recognized by one of the following accrediting associations:

(1) Middle States Association of Colleges and Schools;

(2) North Central Association of Colleges and Schools--Higher Learning Commission;

(3) New England Association of Schools and Colleges--Commission on Institutions of Higher Education;

(4) Northwest Commission on Colleges and Universities;

(5) Western Association of Schools and Colleges--Commission for Senior Colleges [~~Southern Association of Colleges and Schools--Commission on Colleges~~]; or

(6) Southern Association of Colleges and Schools--Commission on Colleges [~~Western Association of Schools and Colleges--Commission for Senior Colleges~~].

(b) Effective June 1, 2011, the board will accept schools accredited by the Southern Association of Colleges and Schools-Commission on Colleges and the schools accredited by the associations identified in subsection (a)(1) - (5) of this section so long as the schools accredited by the identified associations offer a baccalaureate or higher degree, and have a business school or accounting program accreditation recognized by the Council for Higher Education Accreditation (CHEA) as a specialized or professional accrediting organization. Examples of a specialized or professional accrediting organization are the Association to Advance Collegiate Schools of Business-International (AACSB) or the Association of Collegiate Business Schools and Programs (ACBSP).

(c) A university that does not meet the requirements of subsection (a) or (b) of this section, may appeal to the board for consideration. A university recognized by the board under this provision must be reconsidered for approval by the board on the fifth year anniversary of the approval. Universities that do not request or receive re-approval will no longer be recognized under this provision at the conclusion of the fifth year anniversary.

(d) [~~(7)~~] The board may receive assistance from the reporting institution in the State of Texas in evaluating an educational institution. Correspondence schools and vocational schools do not meet the criteria.

(e) [~~(8)~~] The board recognizes and accepts only community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter for degree and course requirements).

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, 2008.

TRD-200805928
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

22 TAC §511.56

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.56, concerning Educational Qualifications under the Act.

The amendment to §511.56 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 a clearer understanding of the educational qualifications that meet the current requirements of the Act.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§511.56. Educational Qualifications under the Act.

(a) An applicant for the Uniform CPA Examination who met the educational requirements of a prior Act that were in effect at the time of taking the initial examination shall continue to be examined under those requirements unless the applicant chooses to meet the education requirements of the current Act.

(b) An applicant for the Uniform CPA Examination under the current Act shall meet the following educational requirements at the time of filing the initial application to take the examination and in order to qualify to write the examination:

(1) hold a baccalaureate or graduate degree conferred by an institution of higher education as defined by board rule, §511.52 recognized by the board; and

(2) complete not fewer than 150 semester hours or quarter-hour equivalents of courses, as defined by board rule, §511.59 and consisting of:

(A) not fewer than 30 semester hours or quarter-hour equivalents of upper level accounting courses as defined by board rule, §511.57;

(B) not fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by board rule, §511.58; and

(C) a 3 semester hour board approved ethics course as defined by board rule, §511.58 [~~of this chapter~~].

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, 2008.

TRD-200805929
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

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 incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 a clearer understanding of the required accounting courses.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill,

General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§511.57. Definition of Accounting Courses.

(a) An individual shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a recognized educational institution as defined by board rule, §511.52 and present a valid transcript from that institution that shows degree credit for not fewer than 30 semester hours of accounting courses as defined in subsection (c) of this section; or

(2) Hold a baccalaureate or higher degree from a recognized educational institution as defined by board rule, §511.52, and after obtaining the degree, complete not fewer than 30 semester hours of accounting courses, as defined in subsection (c) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by board rule, §511.52, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) 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.

(c) The board will accept not fewer than 30 [~~passing~~] semester credit hours of accounting courses without repeat from the courses listed below. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the Uniform CPA Examination. A recognized educational institution must have accepted the courses 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 the transcript-issuing institution. The subject-matter content should be derived from the Uniform CPA Examination Content Specification Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include: [~~intermediate accounting, advanced accounting;~~]

(A) intermediate accounting;

(B) advanced accounting;

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

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

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

(5) financial statement analysis;

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

(7) up to twelve semester hours of taxation, (including tax research and analysis) [~~income tax~~];

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

(9) up to twelve semester hours of accounting information 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~~]

(11) international accounting and financial reporting; and

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

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

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

(C) the internship plan is approved in advance by the faculty coordinator;

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

(E) 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) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) 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 accounting course work has been completed.

(13) [~~(12)~~] At its discretion, the board may accept up to three semester hours of credit as accounting for course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but

not included in paragraphs [paragraph] (1) - (12) [(11)] of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing its merit and content.

(d) The board requires that a minimum of two semester credit hours in research and analysis relevant to the course content described in subsection (c)(6) or (7) of this section is completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the research and analysis content.

(e) [(d)] The following types of introductory courses do not meet the accounting course definition in subsection (c) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses;

(5) accounting software courses; and,

(f) [(6)] Any [any] CPA review course offered by an educational institution or [of] a proprietary organization shall not be used to meet the accounting course definition [nature may not be considered in meeting the requirements under this rule].

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, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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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 incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 a clearer understanding of acceptable business courses offered by recognized educational institutions.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§511.58. Definitions of Related Business Subjects.

(a) An individual who holds a baccalaureate degree from a recognized educational institution as defined by board rule, §511.52 of this title (relating to Recognized Colleges and Universities) may take related business courses offered at an accredited community college, provided they are recognized as upper level courses for a 4-year BBA degree from an institution recognized by the board.

(b) The board will accept not fewer than 24 [passing] semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as 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 credit semester hours taken in any subject area may be used to meet the minimum hour requirement.

(1) business law, including study of the Uniform Commercial Code;

(2) economics;

(3) management;

(4) marketing;

(5) business communications;

(6) statistics and quantitative methods;

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

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

(8) [~~(9)~~] information systems or technology; and

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

(c) In addition to the 24 hours required in subsection (b) of this section, 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 provide students with a framework of ethical reasoning, professional values and attitudes for exercising professional skepticism and other behavior that is in the best interest of the public and profession. The ethics program should provide a foundation for ethical reasoning and include the [~~include~~] core values of [~~such as ethical reasoning,~~] integrity, objectivity and independence.

(d) The board requires that a minimum of 2 semester credit hours in accounting communications or business communications be completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content.

(e) [~~(d)~~] 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.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

CHAPTER 527. PEER REVIEW

22 TAC §527.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.2, concerning Definitions.

The amendment to §527.2 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 the peer review rules will follow the Model Rules of the Uniform Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.2. Definitions.

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

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

(6) "Grading" of peer reviews will be ratings of pass, pass with deficiency(ies), or fail. The peer review rating is clearly indicated in the opinion paragraph of a system review and in the second paragraph of an engagement review.

(7) "Matters" are typically one or more "No" answers to questions in peer review questionnaire(s) that a reviewer concludes warrants further consideration in the evaluation of a firm's system of quality control. A matter is documented on a Matter for Further Consideration form.

(8) "Finding" is one or more related matters that result from a condition in the reviewed firm's system of quality control or compliance such that there is more than a remote possibility that the reviewed firm would not perform and/or report in conformity with applicable professional standards. A finding not rising to the level of a deficiency or significant deficiency is documented on a Finding for Further Consideration form.

(9) "Deficiency" means one or more findings that the peer reviewer has concluded, due to the nature, causes, pattern, pervasiveness, including the relative importance of the findings to the reviewed firm's system of quality control taken as a whole, could create a situation in which the firm would not have reasonable assurance of performing and/or reporting in conformity with applicable professional standards in one or more important respects. Such deficiencies are communicated in a report with a peer review rating of pass with deficiencies.

(10) "Significant deficiency" is one or more deficiencies that the peer reviewer has concluded results from a condition in the reviewed firm's system of quality control or compliance with it such that the reviewed firm's system of quality control taken as a whole does not provide the reviewed firm with reasonable assurance of performing and/or reporting in conformity with applicable professional standards in all material respects. Such deficiencies are communicated in a report with a peer review rating of fail.

(11) "Acceptance" of a peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this title (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) related to the deficiencies or significant deficiencies in the report and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(12) "Completion date" of a peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this title, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(13) "AICPA Public File" firms that are members of the AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center or Private Companies Practice Section and/or have their review performed under the NPRC will post their review information to this public file on the AICPAs web site. Information in the public file includes the firm's most recent peer review report and the firm's response thereto, if any.

(14) "Peer Review State Board Access" is the state board limited access web site that provides the most recent peer review report and the firm's response thereto, if any, for firms with peer reviews commencing after January 1, 2009.

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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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §527.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations.

The amendment to §527.3 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to clarify current qualified sponsoring organizations and add additional ones.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.3. Standards for Peer Reviews and Sponsoring Organizations.

(a) The board adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA and for public company audit firms, the firm inspection standards required under the Sarbanes-Oxley Act of 2002 (SOX), as its minimum standards for review of firms.

(b) Qualified sponsoring organizations shall be the NPRC [~~Center for Public Company Audit Firms (CPCAF) (previously known as SEC Practice Section (SECPS)~~], the AICPA Peer Review Program, the TSCPAs and state CPA societies fully involved in the administration of the AICPA Peer Review Program, [~~National Conference of CPA Practitioners (~~]NCCPAP[~~)~~], the PCAOB, and such other entities which are approved by the board.

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

Filed with the Office of the Secretary of State on November 13, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4, concerning Enrollment and Participation.

The amendment to §527.4 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to clarify the enrollment requirements of firms.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.4. Enrollment and Participation.

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest service or any accounting and/or auditing engagements, including audits, reviews, compilations, forecasts, projections, or special reports as defined in §901.002 General Definitions of the Public Accountancy Act and §501.52(4), (11) and (22) of this title (relating to Definitions). A firm which issues only compilations where no report is required under the Statements on Standards for Accounting and Review Services is required to participate in the program.

(b) A firm which does not perform services as set out in subsection [§527.4](a) of this section shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing services as set out in subsection [§527.4](a) of this section shall notify the board of the change in status within 30 days of the change in status, provide the board with enrollment information within 12 months of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided.

(c) Each firm required to participate under subsection [§527.4](a) of this section shall enroll in the applicable programs of an approved sponsoring organization within 12 months from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization or a committee of the board. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

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

(f) A firm that has been rejected by a sponsoring organization for whatever reason must make a request in writing [an application] to the board for authorization to enroll in a program of another sponsoring organization.

(g) (No change.)

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) of these regulations must comply with the peer review program of the state in which the firm is licensed.

(i) - (j) (No change.)

(k) Interpretive Comment. If a firm is subject to inspections pursuant to SOX and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review of its non-public company attest work in addition to the firm inspection program required by the PCOAB.

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, 2008.

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J. Randel (Jerry) Hill
General Counsel
Texas Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

22 TAC §527.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.5, concerning Effect of Successive Substandard Reviews.

The amendment to §527.5 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to clarify the procedures firms must follow in the event of a deficient review.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.5. [~~Effect of~~] Successive Deficient [~~Substandard~~] Reviews

(a) A firm, including a succeeding firm, which receives two consecutive reviews with a rating of pass with deficiencies and/or fail on a system or engagement review may be required to have an accelerated review by the Peer Review Committee. [~~:~~]

[~~(1) modified and/or adverse system or engagement reviews;~~]

[~~(2) report reviews with significant issues, or~~]

[~~(3) any combination thereof shall have an accelerated review as required by the Peer Review Committee.~~]

(b) If that accelerated review results in a rating of pass with deficiencies or fail [~~modified, or adverse report or a report review with significant issues~~]:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) prior to issuance of any report, the engagement is reviewed and approved [~~before it is issued~~] by a third party reviewer acceptable to the chairman of the Technical Standards Review Committee or the Peer Review Committee, [~~;~~] and

(B) the engagement is completed within thirty days of the acceptance of the peer review report, [~~letter of comments (LOC),~~] and letter of response (LOR) by the sponsoring organization; and

(2) the firm shall not perform any other attest service including any accounting and/or auditing engagements, including, audits, reviews, compilations (as well as compilations where no report is required), forecasts, projections, or other special reports for a period of three years or until given permission by the board to resume this practice.

(c) A firm may petition the board for a waiver from the provisions of this rule.

(d) The board at [~~in~~] its discretion may require a firm which has received a rating of pass with deficiencies or fail [~~modified or adverse review or a report review with significant issues~~] to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.

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, 2008.

TRD-200805935

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

22 TAC §527.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.6, concerning Reporting to the Board.

The amendment to §527.6 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to clarify the reporting requirements of firms who receive pass with deficiencies reviews.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.6. Reporting to the Board.

(a) A firm must [shall] submit to the board:

(1) a copy of the peer review report and the final letter of acceptance (FLOA) from the sponsoring organization, if such report has a rating of pass; [is unmodified with or without comments; or]

(2) a copy of the peer review report, the firm's [letter of comments (LOC),] letter of response [(LOR)], the corrective action letter [(CAL)], and FLOA if the report has a rating of pass with deficiencies or fail; or [is modified in any respect or adverse;]

[(3) a copy of the report, and LOR, if any, in a report review including any significant action in the CAL and FLOA and the unqualified written commitment from the firm under review that it accepts the finding of the reviewer and that it will implement any follow up actions recommended;]

[(4) a copy of any notice from the sponsoring organization that a report review contains significant issues;]

(3) [(5)] A copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies [issues] and findings and the firm's response.

(b) Any report or document required to be submitted under subsection (a) of this section shall be filed with the board within ten days of receipt of the notice of acceptance by the sponsoring organization.

(c) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(d) The reviewed firm must file the results of the peer review or inspection report with the board within ten days of the acceptance from the sponsoring organization as directed below.

(1) For firms enrolled in the NPRC peer review program, the peer review reports will be posted on the AICPA Public File.

(2) For firms enrolled in the AICPA Peer Review Program, the reports will be posted on the Peer Review State Board Access (PRSBA) web site. If the reviewed firm's principal office is outside Texas and the sponsoring organization in a state other than Texas has not adopted the PRSBA web site, the firm must complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents until January 1, 2012, after which the reports will be filed on the PRSBA web site.

(3) For firms enrolled in the TSCPAs and state CPA societies fully involved in the administration of the AICPA Peer Review Program, the reports will be posted on the PRSBA web site. If the reviewed firm's principal office is outside Texas and the sponsoring organization in a state other than Texas has not adopted the PRSBA web site, the firm must complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents until January 1, 2012, after which the reports will be filed on the PRSBA web site.

(4) Firms enrolled in the NCCPAP peer review program must complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(5) Firms enrolled in the PCAOB inspection program must complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(e) The information required under subsection (d) of this section must be filed with the board either by mail or electronically such as by fax, email, or PRSBA web site.

[(d) The reviewed firm or sponsoring organization shall complete the Board's Peer Review Compliance Reporting Form. and file it with the Board within ten days of the final letter of acceptance (FLOA) from the sponsoring organization. All applicable portions of the form must be completed and provided to the Board. The form shall be filed with the board upon final acceptance of the review by the sponsoring organization. All the information requested on the form shall be provided. The firm shall complete the appropriate portions of the form. The form and all required letters shall be filed with the board within ten days of receipt of the FLOA.]

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, 2008.

TRD-200805936
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

22 TAC §527.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.7, concerning Peer Review Oversight Board.

The amendment to §527.7 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to provide information regarding the AICPA Peer Review Board.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board [~~a peer review oversight board~~] (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported [~~on~~] in accordance with *Standards for Performing and Reporting on Peer Reviews* (the Standards) promulgated by the AICPA Peer Review Board [~~peer review standards~~];

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will [~~may~~] be required to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) Effective September 1, 2009, the [~~The~~] PROB shall consist of three members who are active licensed Texas CPAs. No member of the PROB shall be current members of the board or one of its committees, the TSCPAs Peer Review or Professional Conduct Committee, or the AICPA Ethics Committee. The members should have extensive experience in accounting and auditing and be currently in the practice of public accountancy at the partner (or equivalent) level, and shall be members of the TSCPAs or the AICPA. The member's firm must have received a pass opinion from its last peer review [~~, none of whom is a current member of the board or one of its committees~~]. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the [~~continuing~~] qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the NPRC [~~AICPA Center for Public Company Audit Firms (CPCAF) (previously known as SEC Practice Section (SECPS))~~], or the PCAOB, the PROB shall review the published annual reports of those entities or successors, to determine that there is [~~the CPCAF and the PCAOB or its successors and conclude whether the procedures carried out by the CPCAF and the PCAOB or its successors and the disclosures contained in the annual reports are indicative of~~] an acceptable level of oversight;[~~. Based on the results of its review, the PROB shall make an annual recommendation to the board as to the continuing qualification of the CPCAF to continue as an approved sponsoring organization.~~]

(2) Where the sponsoring organization is other than NPRC [~~CPCAF~~] or the PCAOB, the PROB shall perform the following functions:

(A) At least one member of the [~~The~~] PROB shall attend all meetings of [~~visit~~] each sponsoring organization's Peer Review Report Committee (PRRC). Certain PRCC meetings may be conducted via telephone. In those instances, the PROB may join the conference call [~~organization as PROB deems appropriate~~].

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, [~~the letter of comments (if any),~~] the firm's response to the matters discussed [~~in the letter of comments~~], the sponsoring organization's letter of acceptance outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) applicant has provided for the assessment of the results of the review; and

(E) applicant has provided for an independent report acceptance body that meets the standards for peer review, that considers and accepts the reports of the review and requires [~~; the report acceptance body shall consider and accept the results of the review; the report acceptance body should also require~~] corrective actions of firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the *Standards for Performing and Reporting on Peer Reviews* (the Standards) promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

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, 2008.

TRD-200805937
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

22 TAC §527.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.8, concerning Retention of Documents.

The amendment to §527.8 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to extend the retention period of review documentation.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.8. Retention of Documents.

(a) Each reviewer shall maintain all documentation necessary to establish that each review conformed to the review standards of the relevant review program, including the review working papers, copies of the review report, [~~any comment letters,~~] and any correspondence indicating the firm's concurrence, non-concurrence, and any proposed remedial actions and any related implementation.

(b) The documents described in subsection (a) of this section shall be retained by the reviewer for a period of time corresponding to the retention period of the sponsoring organization, and upon request of the Peer Review Oversight Board, shall be made available. In no event shall the retention period be less than 120 [~~90~~] days from the date of acceptance of the review by the sponsoring organization.

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, 2008.

TRD-200805938
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

22 TAC §527.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.11, concerning Responsibilities of Peer Review Report Committee.

The amendment to §527.11 will incorporate recent changes to the Model Rules of the Uniform Accountancy Act.

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 none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

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 to delete the requirement of identifying report reviews which contain significant issues.

The probable economic cost to persons required to comply with the amendment will be insignificant.

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

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on December 28, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

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 businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted. Finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 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 amendment.

§527.11. Responsibilities of Peer Review Report Committee.

The PRRC shall:

(1) - (8) (No change.)

(9) communicate to the governing body of the sponsoring organization on a recurring basis:

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

(C) a summary of the historical results of the peer review program. [~~; and~~]

[~~(10) identify to the firm and the board which report reviews contain significant issues.~~]

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, 2008.

TRD-200805939
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 305-7848

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 105. JUVENILE CORRECTIONAL OFFICERS

37 TAC §105.5

The Texas Youth Commission proposes new §105.5, concerning Juvenile Correctional Officer (JCO) Staffing Requirements. In accordance with provisions of Senate Bill 103 (80th Legislature), the new section will establish certain requirements that must be

met when JCOs are scheduled for work assignments. Specifically, the new section provides for rotation of JCO work assignments at least twice per year, as well as a three-year age differential between JCOs and the youth they supervise. The new section also specifies that staffing plans will provide for at least one JCO for every 12 youth. Finally, the new section provides for the placement of a JCO near any room or location where education services are being provided.

Robin McKeever, Chief Financial Officer, has determined that for the first five-year period the new section is in effect, no fiscal implications for state or local government are anticipated as a result of enforcing or administering the new section.

Alan Walters, Deputy Director for Residential Services, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be protection of youth through enhanced supervision procedures, as well as compliance with recently enacted legislative mandates. There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Manager of Policy and Accreditation, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.0356, which requires the commission to: 1) ensure, to the extent practicable, that an officer or employee is not supervising a child who is not more than three years younger than the officer or employee; 2) rotate the assignment of each JCO at an interval determined by the commission so that a JCO is not assigned to the same station for an extended period of time; 3) ensure at least one JCO is assigned to supervise in or near a classroom or other location in which children receive education services or training; and 4) maintain a ratio of not less than one JCO performing direct supervisory duties for every 12 persons committed to the facility.

The proposed rule implements the Human Resources Code, §61.034.

§105.5. JCO Staffing Requirements.

(a) Purpose. This rule establishes requirements for scheduling station assignments for Juvenile Correctional Officers (JCOs) employed by the Texas Youth Commission (TYC).

(b) Applicability. This rule applies to high restriction facilities operated by TYC.

(c) Definitions.

(1) Extended Period of Time--means more than 12 months.

(2) Station--means any JCO duty assignment at a facility.

(3) Regular Interval--means six months, or other interval less than an extended period of time if approved by the regional director.

(d) General Provisions.

(1) JCOs will rotate station assignments at regular intervals so that a JCO is not assigned to the custodial supervision of the same youth for an extended period of time.

(2) A wing or pod of a dormitory may be considered a station if the population of that wing or pod does not routinely interact with the population of the other wings or pods during activities occurring at the dormitory.

(3) JCOs will be assigned to dormitory stations in a manner that provides for at least a 3-year age differential between the staff and the youth they supervise. When it is not practical to meet the 3-year age differential for an individual JCO station assignment, justification for the assignment must be documented and approved in accordance with agency policy and procedures.

(4) Except as approved by the regional director, a JCO shall not return to a previously assigned station until he/she has served at least one regular interval at another station.

(5) JCO staffing plans will provide for at least one JCO to be stationed to supervise in or near any classroom or other location in which youth receive education services or training at the time the youth are receiving the education services or training.

(6) JCO staffing plans for each facility will provide for a ratio of at least one JCO performing direct supervisory duties for every 12 youth committed to the 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 13, 2008.

TRD-200805924
Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 424-6014

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 273. HEALTH SERVICES

37 TAC §273.7

The Texas Commission on Jail Standards proposes an amendment to §273.7, concerning Tuberculosis Screening Plan for Texas county jails.

Adan Munoz, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Munoz has determined that for each year of the first five years the amendment is in effect the public benefits anticipated as a result of enforcing the amendment as proposed will be conformity to Tuberculosis Screening requirements as set forth by Department of State Health Services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Texas Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this amendment are Local Government Code, Chapter 351, §351.002 and §351.015.

§273.7. Tuberculosis Screening Plan.

(a) Each facility having a capacity of 100 or more beds [~~inmates~~], or housing inmates transferred from a facility with a capacity of at least 100 beds or housing inmates from another state, shall develop and implement a plan for tuberculosis screening tests of employees, volunteers, and inmates. Inmates confined in the jail for more than 7 days shall be tested on or before the 7th day after the day of confinement. Inmates may be exempt from the screening test when the test conflicts with the tenets of an organized religion to which the individual belongs or when the test is contraindicated based on an examination by a physician. An inmate is not required to be retested at each rebooking if the inmate is booked into the facility more than once during a 12-month period, unless the inmate shows symptoms of or is known to have been exposed to tuberculosis.

(b) (No change.)

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

Filed with the Office of the Secretary of State on November 12, 2008.

TRD-200805895
Brandon S. Wood
Assistant Director
Texas Commission on Jail Standards
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 463-8236

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. TEXAS WORKFORCE COMMISSION LOCAL WORKFORCE DEVELOPMENT BOARD ADVISORY COMMITTEE

The Texas Workforce Commission (Commission) proposes the repeal of Chapter 802 in its entirety, relating to the Texas Workforce Commission Local Workforce Development Board Advisory Committee rules:

Subchapter A, General Provisions, §§802.1 - 802.4

Subchapter B, Requirements for TWC Advisory Committee Members, §§802.11 - 802.15

Subchapter C, Requirements for TWC Advisory Committee Meetings, §802.21 and §802.22

Subchapter D, Reporting to the Commission, §802.31

Subchapter E, Agency Evaluation of the TWC Advisory Committee and Report to the Legislative Budget Board, §802.41 and §802.42

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. IMPACT STATEMENTS

PART III. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed repeal is to eliminate Chapter 802, relating to the Texas Workforce Commission (TWC) Local Workforce Development Board Advisory Committee rules, created pursuant to Texas Labor Code §302.013. Under Texas Government Code §2110.008(b), an advisory committee is automatically abolished on the fourth anniversary of the date of its creation. Because the law creating the TWC Advisory Committee became effective September 1, 2003, the automatic abolishment date of the TWC Advisory Committee is September 1, 2007; therefore, these rules are no longer required.

PART II. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the repeal will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the repeal.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the repeal.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the repeal.

There will be no probable economic costs to persons required to comply with this repeal, and there will be no adverse economic effect on small businesses.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed repeal will not have an adverse economic impact on small businesses as these proposed repeals place no requirements on small businesses.

The reasoning that led to these conclusions is as follows:

Texas Government Code §2110.008(c) provides that an advisory committee that has been specifically created by state statute is considered to have been created on the effective date of that law, and if that advisory committee was not created for a specific duration prescribed by statute, then the advisory committee will automatically be abolished on the fourth anniversary of the date of its creation. As the law creating the Local Workforce Development Board Advisory Committee became effective September 1, 2003, then the automatic abolishment date for that advisory committee was September 1, 2007. As the advisory committee has been abolished, these rules are no longer required. There will be no fiscal impact.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the repeal.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the proposed repeal will be to ensure compliance with federal and state requirements.

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

PART III. COORDINATION ACTIVITIES

Comments on the proposal may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§802.1 - 802.4

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

The repeal is proposed pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

§802.1. Requirements for the Texas Workforce Commission Local Workforce Development Board Advisory Committee.

§802.2. Purpose and Tasks.

§802.3. Duration of the TWC Advisory Committee.

§802.4. Agency Contact.

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, 2008.

TRD-200805915
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 475-0829

SUBCHAPTER B. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEMBERS

40 TAC §§802.11 - 802.15

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

The repeal is proposed pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

§802.11. Appointment and Composition.

§802.12. Vacancies.

§802.13. Terms of Office.

§802.14. Selection and Role of a Presiding Officer.

§802.15. Legislative Activity.

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, 2008.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
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For further information, please call: (512) 475-0829

SUBCHAPTER C. REQUIREMENTS FOR TWC ADVISORY COMMITTEE MEETINGS

40 TAC §802.21, §802.22

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

The repeal is proposed pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

§802.21. Open Meetings.

§802.22. Open Records.

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, 2008.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
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SUBCHAPTER D. REPORTING TO THE COMMISSION

40 TAC §802.31

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

The repeal is proposed pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

§802.31. Annual Report.

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, 2008.

TRD-200805918
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
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For further information, please call: (512) 475-0829

SUBCHAPTER E. AGENCY EVALUATION OF THE TWC ADVISORY COMMITTEE AND REPORT TO THE LEGISLATIVE BUDGET BOARD

40 TAC §802.41, §802.42

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

The repeal is proposed pursuant to Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Labor Code, Title 4; Texas Labor Code §302.013, regarding establishment of an advisory committee to the Commission; and Texas Government Code, Chapter 2110, relating to state agency advisory committees.

§802.41. Agency Annual Evaluation.

§802.42. Commission Report to the Legislative Budget Board.

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

Filed with the Office of the Secretary of State on November 12, 2008.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 475-0829

CHAPTER 839. WELFARE TO WORK

The Texas Workforce Commission (Commission) proposes the repeal of Chapter 839 in its entirety, relating to the Welfare to Work program rules:

Subchapter A, General Provisions, §§839.1 - 839.3

Subchapter B, Nondiscrimination and Equal Opportunity, §839.11 and §839.12

Subchapter C, Welfare to Work Grievance Procedures, §§839.31 - 839.36 and §§839.38 - 839.47

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. IMPACT STATEMENTS

PART III. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed repeal is to eliminate Chapter 839, relating to the Welfare to Work program rules.

On January 23, 2004, Congress enacted the Consolidated Appropriations Act for 2004. The Act rescinded unexpended Federal Fiscal Year 1999 (FFY'99) Welfare to Work (WtW) formula funds as of that date, except for those funds needed to carry out closeout activities.

On February 27, 2004, the U.S. Department of Labor (DOL) issued Training and Employment Guidance Letter 19-03 to provide policy and procedures relating to program termination, transition of participants, and closeout pursuant to the rescission of the FFY'99 WtW formula funds. The closeout activities have been completed and the formula funds expended, therefore, these rules are no longer required.

PART II. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the repeal will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the repeal.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the repeal.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the repeal.

There will be no probable economic costs to persons required to comply with this repeal, and there will be no adverse economic effect on small businesses.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed repeal will not have an adverse economic impact on small businesses as the proposed repeal places no requirements on small businesses.

The reasoning that led to these conclusions is as follows:

The Consolidated Appropriations Act of 2004 rescinded unexpended FFY'09 WtW formula funds as of that date, except for those funds needed to carry out closeout activities. Closeout activities were completed and the formula funds expended. As there have been no appropriations during the intervening period and program authorization has expired, there will be no fiscal impact associated with eliminating the rules.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the repeal.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the proposed repeal will be to ensure compliance with federal and state requirements.

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

PART III. COORDINATION ACTIVITIES

Comments on the proposed repeal may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§839.1 - 839.3

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

§839.1. Compliance with Federal Statute and Regulations.

§839.2. Compliance with the State Plan.

§839.3. Reimbursement of Funds.

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, 2008.

TRD-200805920
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
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For further information, please call: (512) 475-0829

SUBCHAPTER B. NONDISCRIMINATION AND EQUAL OPPORTUNITY

40 TAC §839.11, §839.12

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

§839.11. Applicability.

§839.12. Gender Discrimination Excluded.

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, 2008.

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Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
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For further information, please call: (512) 475-0829

SUBCHAPTER C. WELFARE TO WORK GRIEVANCE PROCEDURES

40 TAC §§839.31 - 839.36, 839.38 - 839.47

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and the Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed repeal affects Texas Labor Code, Title 4, and Texas Government Code, Chapter 2308.

§839.31. Purpose and Coverage.

§839.32. Optional Forms Available.

§839.33. Definitions.

§839.34. Grievance Filing Procedures at the Local Level.

§839.35. Time Limitations at Local Level.

§839.36. Welfare to Work Provider Responsibilities.

§839.38. Local Level Informal Conference Procedure.

§839.39. Opportunity and Request for a Hearing.

§839.40. Notice of Hearing.

§839.41. Hearing Officer.

§839.42. Hearing Procedure.

§839.43. Written Decision.

§839.44. Request for Review of a Written Decision.

§839.45. Procedure for Review by SOAH.

§839.46. Final Written Decision.

§839.47. Remedies.

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, 2008.

TRD-200805922
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Earliest possible date of adoption: December 28, 2008
For further information, please call: (512) 475-0829

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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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.8

The Texas Higher Education Coordinating Board withdraws the proposed new §5.8 which appeared in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7395).

Filed with the Office of the Secretary of State on November 12, 2008.

TRD-200805892
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 12, 2008
For further information, please call: (512) 427-6114

19 TAC §5.9, §5.10

The Texas Higher Education Coordinating Board withdraws the proposed new §5.9 and §5.10 which appeared in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7954).

Filed with the Office of the Secretary of State on November 12, 2008.

TRD-200805893
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 12, 2008
For further information, please call: (512) 427-6114

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 15. HEARING AID SERVICES

1 TAC §§354.1231, 354.1233, 354.1235

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1231, Benefits and Limitations; §354.1233, Requirements for Hearing Aid Services; and §354.1235, Requirements for Provider Participation, in Title 1, Part 15, Chapter 354, Subchapter A, Division 15, related to Medicaid hearing aid services. Section 354.1231 and §354.1233 are adopted with changes to the proposed text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7110). The text of the rules will be republished. Section 354.1235 is adopted without changes and will not be republished.

Background and Justification

These rules apply to Medicaid clients 21 years of age and older for whom hearing aid services are payable by the Texas Medicaid program. Hearing aid services for Medicaid clients younger than 21 years of age are reimbursed through the Program for Amplification for Children of Texas (PACT).

The amended rules better align Medicaid rules with current hearing aid technology and standards of care and clarify the rule content.

HHSC made some changes to the proposed rules in response to comments received during the public comment period. As discussed below, HHSC received a number of comments related to proposed new references to advanced practice nurses and physician assistants performing certain hearing aid-related services. In the published proposed rules, HHSC did not intend to expand the provider types that provide these services, but rather sought to clarify who may provide these services. Physicians may delegate certain health care tasks to advanced practice nurses and physician assistants practicing within the scope of their license. In the interest of publishing this rule in a timely manner, HHSC has removed the proposed new references to advanced practice nurses and physician assistants, and will continue to work with stakeholders to ensure that all qualified providers may provide hearing aid-related services.

Comments

The 30-day comment period ended September 29, 2008. During this period, HHSC received comments regarding the proposed amended rules from the following state associations and individuals: Texas Medical Association; Texas Academy of Family Physicians; Texas Pediatric Society; Texas Society of Anesthesiologists; Texas Association of Otolaryngology-Head and Neck Surgery; Texas Academy of Audiology; Texas Hearing Aid Association; Aniel C. Chellius, Jr., M.D.; John K. Yoo, M.D.; and Carla Giannoni, M.D. A summary of the comments relating to the proposed rules and HHSC's responses follows.

Comment: The Texas Medical Association (TMA), Texas Academy of Family Physicians, Texas Pediatric Society, and Texas Society of Anesthesiologists resubmitted a letter that they had originally sent to HHSC on June 25, 2008. The letter addressed issues raised by the Coalition for Nurses in Advance Practice (CNAP) in a January 2008 letter to HHSC. In that letter, CNAP requested certain changes to Medicaid rules, including specifying in the hearing aid rules that certain advanced practice nurses may perform examinations to determine the medical necessity for a hearing aid. TMA and the other physician associations oppose the amendments requested by CNAP that allow certain advanced practice nurses (APNs) to perform these services on the grounds that these services cannot be performed by APNs unless delegated by a physician.

HHSC received related concerns from the Texas Association of Otolaryngology-Head and Neck Surgery and individual physicians. They oppose expanding the providers who may determine medically necessity for a hearing aid to APNs and physician assistants (PAs) because this may place patients at risk of being misdiagnosed and/or inappropriately treated for their medical condition, which could include a serious underlying disease.

Response: HHSC did not intend to expand the provider types that provide these services, but rather sought to clarify who may provide these services. Physicians may delegate certain health care tasks to advanced practice nurses and physician assistants practicing within the scope of their license. In the interest of publishing this rule in a timely manner, HHSC has removed the references to advanced practice nurses and physician assistants, and will continue to work with stakeholders to ensure that all qualified providers may provide hearing aid-related services.

Comment: The Texas Academy of Audiology (TAA) agrees with the allowance of physicians, nurse practitioners, "certain" clinical nurse specialists, and physician assistants to complete the recommendation for hearing aid evaluations and fittings, but had concerns about allowing these practitioners to provide hearing aid evaluations, stating that these practitioners are not usually trained or qualified to complete the hearing aid evaluation. They further commented that this is a diagnostic procedure and should only be performed by those with proper training, licensure, and experience.

Response: HHSC did not intend to expand the provider types that provide hearing aid evaluations, but rather sought to clarify who may provide these services. The current hearing aid rules state that physicians and audiologists may perform hearing evaluations, and HHSC is retaining that language in the amended rules. Physicians may delegate certain health care tasks to advanced practice nurses and physician assistants practicing within the scope of their license. In the interest of publishing this rule in a timely manner, HHSC has removed the references to advanced practice nurses and physician assistants, and will continue to work with stakeholders to ensure that all qualified providers may provide hearing aid-related services.

Comment: TAA supports the proposed amended rules and commends HHSC for lowering the pure-tone average from 45 dB to 35 dB, but requested that HHSC consider revising the definition of pure-tone average to account for hearing loss in the high frequency range (frequencies above 2000 Hz). The current pure-tone average is based on thresholds at 500, 1000, and 2,000 Hz. However, there are many patients with significant hearing loss in the high frequencies who would greatly benefit from the use of hearing aids, but who have a pure-tone average below 35 dB when the 500, 1,000, and 2,000 Hz frequencies are used. Response: HHSC considered a pure-tone average below 35 dB. HHSC determined that the threshold of a pure-tone average 35 dB meets current industry standard of care and greatly increases access to care. The rule language was not changed in response to this comment.

Comment: TAA and the Texas Hearing Aid Association (THAA) support reducing the time between fittings of replacement aids from 6 years to 5 years and lowering the decibel level for determining hearing loss. The associations also support the addition of the following benefits: repairs, replacement of lost or damaged hearing aids, binaural fittings, batteries and supplies.

Response: HHSC acknowledges these supportive comments.

Comment: THAA requested clarification of the proposed change that allows replacement aids every 5 years. Can a recipient of a monaural hearing aid within the last five years receive the second hearing aid to complete the binaural fitting, provided the recipient qualifies for a binaural fitting under §353.1231(b)(10)? THAA believes those recipients within the five year restriction period under proposed §353.1231(b)(7) should not be refused a binaural benefit simply because they have already received a monaural fitting.

Response: Binaural hearing aids will be a benefit every five years (two hearing aids, with one hearing aid for the left ear every five rolling years and one hearing aid for the right ear every five rolling years). This will be addressed in policy. The rule language was not changed in response to this comment.

Comment: THAA requested that the amended rules define "hearing aid repairs" and "related hearing aid supplies" to ensure this benefit is applied properly and not abused. For hearing aid repairs, THAA recommends specifying whether repair is limited to the replacement parts or components necessary to restore the hearing aid's functionality; whether repairs include adjustments to original components that are necessary to make the unit perform as intended; whether repairs are limited to repairs made by the manufacturer after purchase or include repairs made by the provider on site; and whether providers are entitled to reimbursement on repairs made under warranty by the manufacturer. In addition, THAA requested that HHSC clarify the procedures that will be used for obtaining prior authorization prior to the effective date of the rules.

The Texas Academy of Audiology expressed similar concerns regarding how HHSC will determine when replacement is appropriate for hearing aids that have been lost or damaged and if there will be limitations and/or require prior authorization.

Response: These comments will be addressed in policy. The rule language was not changed in response to these comments.

Comment: THAA requested that HHSC consider seeking a waiver under 42 CFR §441.351 to add licensed fitters and dispensers to the list of hearing aid providers eligible to receive compensation for hearing evaluations.

Response: Such a waiver would require a change to the Texas Medicaid State Plan. The rule language was not changed in response to this comment.

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

§354.1231. Benefits and Limitations.

(a) Benefits. Reimbursement for hearing aid services available through the Texas Medical Assistance (Medicaid) Program shall be provided in accordance with federal regulations found at 42 CFR Subchapter C, Medical Assistance Programs, and the provisions and procedures found elsewhere in this chapter. The following hearing aid services shall be reimbursed through the Texas Medicaid Program:

(1) Physician examination to determine the medical necessity for a hearing aid;

(2) Hearing aid evaluations, including home visit hearing evaluations;

(3) Hearing aids (monaural or binaural) and hearing aid repairs;

(4) Replacement batteries and related hearing aid supplies;

(5) Initial fitting, dispensing, and post-fitting check of the hearing aid(s); and

(6) First and second revisits to assess the recipient's adaptation to the hearing aid(s) and the functioning of the instrument(s).

(b) Limitations and exclusions. All authorized hearing aid providers, as described in §354.1233 of this Division (relating to Requirements for Hearing Aid Services), must comply with the following conditions and limitations established by the Health and Human Services Commission (Commission) or its designee.

(1) Hearing aid services are available to persons who are 21 years of age and older and eligible for Medicaid services.

(2) An individual using a hearing aid before becoming eligible for Medicaid benefits may have a hearing evaluation conducted by an approved hearing aid services provider after becoming eligible for Medicaid. Medicaid reimbursement for a new hearing aid shall be denied if the provider concludes, based upon the evaluation findings, that the recipient's present hearing aid adequately compensates for the degree of hearing loss.

(3) Providers may not submit a hearing evaluation claim to the Commission or its designee unless the Medicaid recipient meets

the eligibility criteria in §354.1233, Requirements for Hearing Aid Services.

(4) Repairs are limited to one per year per hearing aid. Additional repairs require prior authorization.

(5) Replacement of an aid may be considered when loss or irreparable damage has occurred. Replacement of a hearing aid requires prior authorization. Replacement will not be authorized in situations where the equipment has been abused or neglected.

(6) Recipients may receive home visit hearing evaluations and hearing aid fittings only on the written recommendation of a physician.

(7) Hearing aids may be replaced once every five years.

(8) Hearing aid services do not include auditory training, speechreading, or other types of rehabilitative services.

(9) Hearing aids are limited to eligible recipients whose air conduction puretone average (500 Hz, 1000 Hz, 2000 Hz) in the better ear is 35 dB hearing loss (HL) or greater.

(10) Recipients meet the criteria for binaural aids if they meet the conditions for a monaural hearing aid and have at least a 35 dB hearing loss in both ears.

§354.1233. Requirements for Hearing Aid Services.

(a) Hearing aid services. Providers of hearing aid services must comply with all applicable federal and state laws and regulations, recognized professional standards, and the provisions cited in Division 1, of this subchapter, Medicaid Procedures for Providers, and Division 11 of this subchapter, General Administration, in addition to the conditions, specifications, limitations established by the Texas Health and Human Services Commission (Commission) or its designee, and applicable requirements of their licensing authority.

(1) Physicians. Physicians shall be reimbursed for all services covered by the Texas Medicaid Program, including examinations and hearing evaluations.

(2) Audiologists. Audiologists shall be reimbursed for hearing evaluations and for the fitting and dispensing of hearing aids.

(3) Fitters and dispensers. Hearing aid fitters and dispensers shall be reimbursed for the fitting and dispensing of hearing aids.

(b) Hearing evaluations. Hearing evaluations must be recommended by a physician based upon examination of the recipient. Reimbursement for hearing evaluations will be made only to physicians or licensed audiologists. The recipient must have a medical necessity for a hearing aid as stated in §354.1231, Benefits and Limitations. The recipient must not have any medical contraindications to the ability to use or wear a hearing aid.

(1) A physician who recommends a hearing evaluation must be licensed in the state where and when the examination is conducted.

(2) The physician must indicate on the Physician Examination Report form if the recipient needs a hearing evaluation based on the examination of the recipient. Medicaid reimbursement for a hearing evaluation shall be based on the physician's recommendation that the hearing evaluation is medically necessary.

(3) Providers must administer hearing evaluations using appropriate procedures as specified within their scope of practice and recognized professional standards.

(4) Reimbursement for home visit hearing evaluations shall be made if the recipient's physician has documented that the recipient's medical condition prohibits traveling to the provider's place of business.

(5) Providers of hearing evaluations must have a report in the recipient's record. Providers must include in the report hearing evaluation test data.

(6) Hearing evaluations performed by fitters and dispensers are not reimbursable. If a fitter or dispenser performs a hearing evaluation on a recipient, the recipient shall not be billed for the hearing evaluation.

(c) Hearing aids. Providers must offer each recipient eligible for a hearing aid a new instrument that meets the recipient's hearing need.

(1) Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model that meets the performance specifications of the manufacturer and the hearing needs of the recipient. Providers must also ensure that each hearing aid is covered by at least a standard 12-month manufacturer's warranty, effective from the dispensing date.

(2) Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with all necessary tubing, cords, connectors, and a one-month supply of batteries. The instructions for care and use of the hearing aid must be included with the hearing aid package.

(3) Thirty-day trial period. Providers must allow each eligible recipient thirty days to determine if the recipient is satisfied with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of thirty consecutive days from the dispensing date. Providers must inform recipients of the trial period and present the beginning and ending date of the trial period to the recipient in writing.

(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the recipient is satisfied with the result of the hearing aid or the provider determines that the recipient cannot benefit from the dispensing of an additional hearing aid. A new trial period begins with the dispensing date of each hearing aid.

(B) Providers may charge a rental fee for hearing aids returned during the trial period.

(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and the State Board of Examiners for Speech-Language Pathology and Audiology.

(ii) The maximum rental fee for eligible Medicaid recipients shall be $2 per day. This fee shall not be a covered benefit of the Texas Medicaid Program. Recipients shall be responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the recipient's file the signed certification acknowledging responsibility to pay hearing aid rental fees.

(iii) Providers must comply with all procedures and directions of the Texas Medicaid Program regarding forms and certifications required during the 30-day trial period. Providers must allow thirty days to elapse from the hearing aid dispensing date before completing a "30-day trial period certification statement." The certification statement must be maintained by the provider in the recipient's file.

(4) Post-fitting checks. The fitter and dispenser must perform a post-fitting check of the hearing aid within five weeks of the initial fitting. The post-fitting check is part of the dispensing procedure and is not reimbursed separately.

(5) First revisit. The first revisit shall include a hearing aid check. Providers must make counseling available as needed within six months of the post-fitting check.

(6) Second revisit. The purpose of the second revisit is to make any necessary adjustments to the hearing aid. Provider must conduct a second revisit as needed.

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, 2008.

TRD-200805912
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: December 2, 2008
Proposal publication date: August 29, 2008
For further information, please call: (512) 424-6900

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME PROGRAM RULE

SUBCHAPTER A. GENERAL

10 TAC §53.2

The Texas Department of Housing and Community Affairs (Department) adopts amendments to 10 TAC Chapter 53, Subchapter A, §53.2, concerning Definitions. The amendments are adopted without changes to the text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7931) and will not be republished.

The amendment makes changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

SUMMARY OF COMMENTS AND STAFF RESPONSES.

General Public Comment.

Comment:

Commenter recommends recognition of an agency of the state or community mental health center to be listed as eligible applicants as permitted by the HOME Final Rule. (12)

Staff Response:

Both entity types are currently eligible either as governmental entities or non-profit organizations under the HOME Program Rule. No change is recommended at this time.

Comment:

Commenter recommends that special needs households be exempt from participating in the mandatory self-sufficiency program as currently required under the Tenant-Based Rental Assistance (TBRA) program and be permitted to participate in a community wide program or alternate program exclusively serving this special needs population. (12)

Staff Response:

Currently, TBRA program requirements require participation in a self-sufficiency program to make certain the household is able to transition to a more permanent housing solution. By removing this requirement, households may be placed at risk of losing their housing at the end of the contract term, without a good alternative that will continue to provide quality and safe affordable housing. No change is recommended at this time.

Comment:

Commenter asks the Department to recognize the difficulty of repaying loans on housing rented by or owned by extremely low income working households and request housing assistance to farmworkers be provided as grants. (15)

Staff Response:

Currently, non-profit organizations and units of general local government assisting farmworkers are eligible to apply for funding and assist farmworker families. Understandably, many of these families are among the lowest income families in the state and while the Department cannot provide assistance in the form of a grant, it is anticipated that many of these families would qualify for deferred-forgivable loans under the current HOME rule. No change is recommended at this time.

Comment:

Commenter includes a variety of recommendations including exploring more seamless contributions of funding and working to improve mechanism to layer financing in more effective and efficient ways. A second recommendation requests that staff offer a multifamily application workshop jointly with Texas Rural Development, Texas State Affordable Housing Corporation, and other potential leveraged resources upon the issuance of the USDA 2009 §§514-516 Notice of Funding Availability. The final recommendation under this comment requests that HOME and Housing Trust Fund monies serve as "first-funding" for multifamily farmworker developments, allowing enough lead time to allow housing sponsors to secure all financing within various agency timeframes and deadlines. (15)

Staff Response:

While these recommendations are not rule specific, the HOME Division will take the recommendations under advisement and direct staff to examine ways to improve processes so that the effectiveness of the Department's HOME and HTF funds are maximized. As no specific rule change is currently requested, there is no recommendation for a rule change to address this issue at this time.

Comment:

Commenter requests the establishment of a pilot program for farmworker housing so grant guidelines can differ slightly form those in the established HOME program, recognizing that providing housing options for farmworkers may require some specific concessions. (15)

Staff Response:

While these recommendations are not rule specific, the HOME Division will take the recommendations under advisement. As stated previously, the program's current structure allows entities to apply for and distribute funds to farmworker families. Income incentives are structured in all of the HOME Division's programs to target the lowest-income families. Staff would welcome applications to assist these families and would work closely would the administrator to encourage the success of the program and provide more specific recommendations at a later date, if appropriate.

Comment:

Commenter request that repair dollars are made available to individually-owned and multifamily rental housing currently serving farmworkers. (15)

Staff Response:

Under the current program guidelines, owner-occupied housing is eligible for housing assistance through the HOME program. Additionally, the HOME Division has an annual set-aside in its rental allocation to specifically assist with rental preservation, which would include multifamily rental housing. Unfortunately, the HOME Division does not currently offer repair funds for single-family rental housing-our focus is family-owned housing. As no specific rule change is currently requested, there is no recommendation for a rule change to address this issue at this time.

Comment:

Commenter asks the HOME Division to utilize TBRA for farmworkers, especially migrant workers. (15)

Staff Response:

As with all HOME programs, non-profits or units of general local government that would like to apply for TBRA may request these funds. However, there are federal regulations that stipulate lease requirements and regulations that effectively limit the portability, that create challenges in the administration of the program for a migrant Farmworker family. As long as an organization can meet the federal requirements of the program, the HOME Division welcomes applications and would work to encourage their success. As no specific rule change is currently requested, there is no recommendation for a rule change to address this issue at this time.

Comment: Commenter states that the USDA Rural Development regulations and the HOME regulations together force the developer to take the lower rents, which are the HUD fair-market rents, and apartments cannot operate on that amount. There are several instances where this problem has resurfaced and it has been difficult to resolve even with reducing the HOME loan amount and getting a Housing Trust Fund loan to cover the units. Units without rental assistance or on deep subsidy are the exception to this challenge. (17)

Staff Response:

Staff has been working closely with USDA Rural Development on resolving issues together on proposed transactions including subsidy layering. As no specific rule change is currently requested, there is no recommendation for a rule change to address this issue at this time.

Comment:

Commenter makes several recommendations to address timelines for internal policies not currently addressed in the program rule. This includes language in agreements prohibiting setups of projects within 90 days of the end of the contract term and loan closing requirements. (8)

Staff Response:

As no specific rule change is currently requested, there is no recommendation for a rule change to address this issue at this time, however, staff will continue to work to streamline processes for contract administrators.

Comments were received from: (8) Hunter and Hunter Consultants; (12) MHMRA, Harris County; (15) Motivation Education & Training, Inc.; (17) Hoover.

Board Response: The Board approved the final order adopting these amendments on November 13th, 2008.

The amended section is adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306; §2306.124 which authorizes the Department to adopt and publish rules regarding the making of mortgage loans, the regulation of borrowers and the resale and disposition of real property, or an interest in the property, that is financed by the Department; and §2306.124 which requires the Board to establish a schedule of fees and penalties relating to the operation of the finance division.

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 17, 2008.

TRD-200805966
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 7, 2008
Proposal publication date: September 19, 2008
For further information, please call: (512) 475-3916

SUBCHAPTER B. ALLOCATION OF FUNDS

10 TAC §53.21

The Texas Department of Housing and Community Affairs adopts amendments to 10 TAC Chapter 53, Subchapter B, §53.21, concerning Allocation of Funds. The amended section is adopted without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7933).

The amendments make changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rule.

No comments were received regarding the adoption of the amendments.

The Board approved the final order adopting the amendments on November 13, 2008.

The amendments are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306; §2306.124 which authorizes the Department to adopt and publish rules regarding the making of mortgage loans, the regulation of borrowers and the resale and disposition of real property, or an interest in the property, that is financed by the Department; and §2306.124 which requires the Board to establish a schedule of fees and penalties relating to the operation of the finance division.

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 17, 2008.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

SUBCHAPTER C. PROGRAM ACTIVITIES

10 TAC §§53.30 - 53.37

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter C, §§53.30 - 53.37, concerning the HOME Program Rule, without changes to the proposal as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7934) and will not be republished.

The repeal is adopted in order to allow adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2009 rule cycle.

No comments were received regarding the adoption of this repeal.

The Board approved the final order adopting this repeal on November 13, 2008.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

Filed with the Office of the Secretary of State on November 17, 2008.

TRD-200805968
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 7, 2008
Proposal publication date: September 19, 2008
For further information, please call: (512) 475-3916

10 TAC §§53.30 - 53.37

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 53, Subchapter C, §§53.30 - 53.37, concerning HOME Program Rule. Sections 53.30 - 53.32 are adopted with changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7934). Sections 53.33 - 53.37 are adopted without changes and will not be republished.

The adopted new sections make changes to the existing rules to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION

Public comments and the Department's responses are presented in the order in which the subchapter and sections appear in the chapter. Following the section number is the title of the section as it appears in the rule. Following the comment is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Comment:

Commenter requests the Department make the 2009 proposed rules retroactive to govern the 2008 contracts that will be written on the 2008 HOME applications that are currently being submitted to the Department. (7)

Staff Response:

Staff recognizes this issue, concurs and made a change to the rule as follows. Although the Board approved this in §53.1, for administrative reasons this is being moved from §53.1 to §53.30.

§53.30. Activities in Consolidated Plan.

Through its Consolidated Plan, the Department has identified general guidelines for funding of a Program Activity. Applicants that meet the qualifications identified in this chapter and under the terms of a NOFA may apply for any Program Activity the Department funds. All provisions of this chapter apply to any Application received on or after the date of adoption of this chapter by the Department's Board. Existing Contracts or Applications received prior to the date of adoption of this chapter may be amended in writing at the request of the Administrator or Applicant and with Department approval, subjecting the Contract or Application to all provisions of this chapter. Amendments proposing only partial adoption of this chapter are not permitted and no amendment adopting this chapter shall be permitted if, in the discretion of the Department, any of the provisions of this

chapter conflict with the NOFA under which the existing Contract was awarded or Application was submitted.

§53.31(g). Owner-Occupied Housing Assistance Program (OCC).

Comment:

Commenter requests that the price per house maximum be set at the time of the NOFA, not as part of the rules-making process as this will allow staff latitude to make changes as necessary due to rising construction costs. (7)

Staff Response:

Staff has researched and evaluated the request for an increase in the amount of assistance per household for construction costs and made changes to §53.31(g) to accommodate changes in housing costs. Based on that analysis and the changes, staff does not feel it is necessary to make adjustments at the time of release of the NOFA. No change to the rule is made.

Comment:

Commenter requests that the maximum cost per home be raised to $75,000 and states that this increase will take into account increased construction costs and to allow adequate funds for soft costs. (7)

Several commenters stated that their companies are currently working with the HOME Owner-Occupied (OCC) program and that they are each building an 860 square foot home, four sides brick, three bedrooms, one bathroom. If the company were to bid on the house today, the bid would be between $59,000 and $64,500 per home, to build one at a time, according to one commenter, and approximately $70,000 according to the other commenter. If the project had five or six homes together, the bid would be between $57,000 and $62,000 per home according to one commenter and would reflect a cost savings of about $63,000 according to the other commenter. It is important to note that these costs do not include demolition of the existing structure. (59) (9)

Commenter states the $60,000 existing maximum for the 1-4 person household has been insufficient for some time now. While a $5,000 increase is a start, it will still not meet the cost of home reconstruction in this program; the costs are far above the $65,000 amount. While some communities can assist with these costs through local match, many of the smaller, more poverty stricken communities or communities impacted by disasters will not be able to assist. (5)

Commenter requests increases in costs regarding the Owner-Occupied Program. The current caps or restrictions have not caught up to the times and especially given today's environment, increasing costs of not only rehab but also reconstruction certainly puts a strain in getting that housing out for very low-income homeowners for rehab and reconstruction projects. (11)

Staff Response:

Staff has researched various methods of establishing a construction cost limitation and is changing the $73.00 cost per square foot maximum based on using the Marshall and Swift Residential Cost Handbook for single family homes of average quality and sample plans utilized for constructing homes in the OCC Program. The maximum cost per square foot determined using Marshall and Swift compares extremely well to the numerous independent bids received during the public comment period. The actual costs for demolition and aerobic septic systems have been excluded from the maximum per square foot cost since these are not standard costs associated with OCC reconstructs throughout the State of Texas. Oftentimes, demolition costs are provided as match by the communities administering the OCC award and also vary greatly between contractors that perform the construction work. Lastly, the $73.00 per square foot maximum does take into consideration increased third-party inspection Texas Residential Construction Commission requirements. Staff has made the following changes to the rule:

(g) The maximum amount of assistance is the total of construction costs and soft costs provided to an eligible Household. The total construction costs are limited to:

(1) Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs; and,

(2) Rehabilitation that is not Reconstruction: $30,000.

This change necessitates a change to §53.32(f) and (i) due to the references to construction costs associated with reconstructed units and the delineation between construction costs and soft costs. Staff has made the following changes to the rule:

(f) The maximum amount of assistance for Rehabilitation that is not Reconstruction is the total of the construction costs and soft costs provided to an eligible Person with Disabilities Household that is also using funds for acquisition and is limited to $20,000. Rehabilitation assistance must be utilized for accessibility modifications to the unit.

(i) When an MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the maximum amount of assistance is the total of construction costs and soft costs provided to an eligible Household. The total construction costs are limited to Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs.

§53.32(b). Homebuyer Assistance Program (HBA).

Comment:

Commenter requests clarification on whether HOME funds should be allowed to be used to assist first time home buyers in acquiring an existing Manufactured Housing Unit (MHU) if no repairs are required and the unit passes inspection requirements as evidenced by a final inspection performed by an approved inspector. (8)

Staff Response:

It has been the Department's practice to limit acquisition only activities to new Manufactured Housing Units only. Staff is concerned that allowing the use of homebuyer assistance toward existing units, without research or more background information, will result in investment of funds toward substandard units. In order to be of the most benefit to the homeowner, inspection and/or physical standards would have to be developed. Staff will take the recommendation under advisement, but will need to research further before providing recommendations to the Board

for a rule change. To clarify the requirement, staff made the following changes to the rule:

(b) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. An new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act;

(2) the unit is permanently installed;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

§53.32(e). Homebuyer Assistance Program (HBA).

Comment:

Commenter states that for homebuyer assistance, a $10,000 cap is not enough for underwriting the cost of housing particularly in markets where housing is very limited. The entity must exclusively go to reconstruction and then needs all of the possible subsidy to make it possible for first-time homebuyers who are low income. (11)

Commenter suggests that to make an impact and drive the program out to the rural areas, the Department should provide $15,000 worth of assistance for areas within an MSA and $20,000 for areas outside the MSA. An additional recommendation would be to provide a base of $10,000 in homebuyer assistance for existing housing and then provide $20,000 for new construction, since new construction is more expensive. (8)

Commenter suggests eliminating separate award amount for persons with disabilities as having a disability does not equate to any financial status or need and concludes if a particular property needs to be retrofitted to address ease of accommodation, it is eligible under subsection (f) as an acquisition and rehabilitation. (8)

Staff Response:

Staff recognizes the points made by the commenter, especially as they relate to AMFI comparisons and since this recommendation would result in a higher amount of assistance in rural areas, staff concurs and changes the rule as follows:

(e) The maximum amount of assistance is the total of the downpayment and closing cost assistance and soft costs provided to an eligible Household. The total amount of downpayment and closing cost assistance is limited to:

(1) For Persons with Disabilities: $15,000; or

(2) For Households assisted in a non-Participating Jurisdiction: $20,000.

This change necessitates a change to §53.32(g) and (l) due to the references to acquisition and closing cost assistance associated with acquisition activities and the delineation between assistance costs and soft costs. Staff has made the following changes to the rule:

(g) The maximum amount of assistance is the total of the acquisition, closing, and soft costs provided to an eligible Household for a contract for deed conversion and is limited to $25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance.

(l) The total amount of assistance less soft costs under this section and Program Activity, including Rehabilitation and activities involving contract for deed conversion, an MHU being replaced with newly constructed housing (site-built), and a housing unit being replaced on an alternate site, will be provided in the form of a zero percent (0%) deferred, forgivable Loan with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

§53.32(m). Homebuyer Assistance Program (HBA).

Comment:

Commenter asks that we add "No 3-2-1 or 2-1 interest rate buy-downs are allowed" to this section of the rule. If a lender is going to provide a discount rate and a discounted interest rate, then it should be for the life of the loan, not for two or three years, in which case all we're doing is delaying the default for two or three years. The recommendation would be to prohibit two-one buy-downs or three-two-one buy-downs in this program, at least until the market turns around. (8)

Commenter asks that we add "An origination fee and any other non-pass through fees associated with the mortgage loan may not exceed 2% of the mortgage loan amount for origination and discount fees and 1% of the mortgage loan amount for other non-pass through fees" to this section of the rule. Currently, there is a 1 percent origination fee and generally there is a 1 percent or maybe a 2 percent discount fee to discount the interest rate for the homebuyer. This is not an incentive to participate in the program. The suggestion would be to increase at least the minimum to a 3 percent total and provide putting more leeway for the mortgage lender to provide discount points to lower the interest rate. (8)

Staff Response:

Staff concurs with the interest rate buy-down comments and changes the rule as follows. Staff also recommends clarifying other fees but does not recommend an increase in the fees a lender is able to charge above that which is in the rule.

(m) The following first lien purchase loan requirements are imposed for households receiving Homebuyer Assistance:

(1) No adjustable rate mortgage loans (ARMs) or interest rates buy-down loans are allowed;

(2) No mortgages with a loan to value equal to or greater than 100% are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) An origination fee and any other fees associated with the mortgage loan (other than fees reimbursed to third-parties) may not exceed 2% of the loan amount; and

(5) The debt to income ratio (back-end ratio) may not exceed 45%.

List of Commenters: (5) Public Management, Inc.; (7) Langford Community Management Services; (8) Hunter and Hunter Consultants; (9) Randy Malouf, Builder; (11) City of Midland; (59) EFC Builders, Ltd. Co.

Board Response: The Board approved the final order adopting the new sections on November 13, 2008.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.30. Activities in Consolidated Plan.

Through its Consolidated Plan, the Department has identified general guidelines for funding of a Program Activity. Applicants that meet the qualifications identified in this chapter and under the terms of a NOFA may apply for any Program Activity the Department funds. All provisions of this chapter apply to any Application received on or after the date of adoption of this chapter by the Department's Board. Existing Contracts or Applications received prior to the date of adoption of this chapter may be amended in writing at the request of the Administrator or Applicant and with Department approval, subjecting the Contract or Application to all provisions of this chapter. Amendments proposing only partial adoption of this chapter are not permitted and no amendment adopting this chapter shall be permitted if, in the discretion of the Department, any of the provisions of this chapter conflict with the NOFA under which the existing Contract was awarded or Application was submitted.

§53.31. Owner-Occupied Housing Assistance Program (OCC).

(a) Eligible activities are limited to the Rehabilitation or Reconstruction of existing owner-occupied housing. The Rehabilitation of an MHU is not an eligible activity.

(b) Eligible forms of homeownership are limited to fee simple title to the real property, a 99-year leasehold interest in the real property, a 50-year leasehold interest on trust, a 50-year leasehold on restricted Indian lands, or ownership or membership in cooperative or a mutual housing project that constitutes homeownership under Texas law.

(c) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;

(2) the unit is permanently installed in accordance with the Texas Manufactured Housing Standards Act;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

(d) The Household must comply with the following initial eligibility requirements:

(1) own and occupy the single family unit as its Principal Residence;

(2) be an Income Eligible Household;

(3) be located within the Administrator's Service Area; and

(4) meet all other eligibility requirements.

(e) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(f) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(g) The maximum amount of assistance is the total of construction costs and soft costs provided to an eligible Household. The total construction costs are limited to:

(1) Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs; and

(2) Rehabilitation that is not Reconstruction: $30,000.

(h) The minimum amount of assistance to an eligible household is $1,000.

(i) The estimated value of the housing unit, after Rehabilitation or Reconstruction, must not exceed the HUD §203(b) Limits.

(j) The form of assistance to an eligible Household is based on AMFI except in the instances of an MHU being replaced with newly constructed housing (site-built) on the same site or any housing unit being replaced on an alternate site. In accordance with the Housing Assistance Rider 5 of the Department's Legislative Appropriation, the Department shall use the state average median family income in determining the form of assistance as prescribed in Figure: 10 TAC §53.31(j) for eligible Households living in those counties where the area median family income is lower than the state average median family income. For Rehabilitation (excluding Homebuyer Assistance and contract for deed conversion), the Loan amount is based upon the amount of assistance to be provided to the household. Once construction is complete, the loan balance will be determined by subtracting soft costs and/or costs of lead-based paint remediation. The Department will adjust the Loan balance with a principal reduction in the amount necessary to arrive at the correct Loan balance, taking into account any change orders that resulted in a net decrease or increase in the amount of assistance. Any loan that has not closed at the time this chapter is adopted will follow the provisions in this subsection.
Figure: 10 TAC §53.31(j)

(k) When an MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the activity is considered acquisition and will trigger affordability requirements for homeownership as defined by 24 CFR §92.254. (Refer to §53.32(l) of this subchapter.)

(l) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease, unless the Property is transferred by devise, descent or operation of law upon the death of the homeowner that is a Household whose Annual Income does not exceed 30% of the AMFI. The Department shall use the state average median family income for eligible Households living in those counties where the area median family income is lower than the state average median family income, as defined in the Housing Assistance Rider 5 of the Department's Legislative Appropriation, to apply this subsection. Any Contract that is active at the time this chapter is adopted will follow the provisions in this subsection.

(n) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the require-

ments of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the balance on the Loan will be paid at closing.

(o) Housing units assisted with HOME funds must meet or exceed the TMCS and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the Final Rule.

§53.32. Homebuyer Assistance Program (HBA).

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units.

(b) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;

(2) the unit is permanently installed in accordance with the Texas Manufactured Housing Standards Act;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

(c) The Household must comply with the following initial eligibility requirements:

(1) occupy the assisted single family unit as its Principal Residence;

(2) be an Income Eligible Household and for contract for deed conversion, the Households Annual Income must not exceed 60% AMFI;

(3) be located within the Administrator's Service Area;

(4) meet all other eligibility requirements; and

(5) complete a homebuyer counseling program/class.

(d) The Property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) The maximum amount of assistance is the total of the downpayment and closing cost assistance and soft costs provided to an eligible Household. The total amount of for downpayment and closing cost assistance is limited to:

(1) For Persons with Disabilities: $15,000; or

(2) For Households assisted in a non-Participating Jurisdiction $20,000.

(f) The maximum amount of assistance for Rehabilitation that is not Reconstruction is the total of the construction costs and soft costs provided to an eligible Person with Disabilities Household that is also using funds for acquisition and is limited to $20,000. Rehabilitation assistance must be utilized for accessibility modifications to the unit.

(g) The maximum amount of assistance is the total of the acquisition, closing, and soft costs provided to an eligible Household for a contract for deed conversion and is limited to $25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance.

(h) The maximum amount of assistance for Rehabilitation to an eligible Household for a contract for deed conversion is limited to the OCC Program Activity requirements in §53.31(g) of this subchapter.

(i) When an MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the maximum amount of assistance is the total of construction costs and soft costs provided to an eligible Household. The total construction costs are limited to Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs.

(j) The minimum amount of assistance to an eligible Household is $1,000.

(k) The purchase price of the housing unit, plus the value of the Rehabilitation or Reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

(l) The total amount of assistance less soft costs under this section and Program Activity, including Rehabilitation and activities involving contract for deed conversion, an MHU being replaced with newly constructed housing (site-built), and a housing unit being replaced on an alternate site, will be provided in the form of a zero percent (0%) deferred, forgivable Loan with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(m) The following first lien purchase loan requirements are imposed for households receiving Homebuyer Assistance:

(1) No adjustable rate mortgage loans (ARMs) or interest rates buy-down loans are allowed;

(2) No mortgages with a loan to value equal to or greater than 100% are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) An origination fee and any other fees associated with the mortgage loan (other than fees reimbursed to third-parties) may not exceed 2% of the loan amount; and

(5) The debt to income ratio (back-end ratio) may not exceed 45%.

(n) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(o) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(p) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease.

(q) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the Loan will be paid at closing.

(r) Housing units that will be rehabilitated with HOME funds must meet or exceed the TMCS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the Final Rule. Housing units that are provided assistance for acquisition only, must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(s) This Program Activity is a CHDO-eligible activity.

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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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

SUBCHAPTER D. APPLICATION REQUIREMENTS AND PROCEDURES

10 TAC §§53.40 - 53.49

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter D, §§53.40 - 53.49, concerning the HOME Program Rule, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7938) and will not be republished.

The repeal is adopted in order to allow adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2009 rule cycle.

The Board approved the final order adopting this repeal on November 13, 2008.

No comments were received regarding the adoption of this repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

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10 TAC §§53.40 - 53.49

The Texas Department of Housing and Community Affairs (the Department) adopts new Chapter 53, Subchapter D, §§53.40 - 53.49, concerning HOME Rules. Sections 53.45, 53.47 and 53.48 are adopted with changes to the proposed in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7938). Sections 53.40 - 53.44, 53.46, and 53.49 are adopted without changes and will not be republished.

The adopted new sections make changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rule.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION.

Public comments and the Department's responses are presented in the order in which the subchapters and sections appear in the new chapter. Following the section number is the title of the section as it appears in the rule. Following the comment is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Section 53.45(d). Rental Housing Development (Multifamily) Application Requirements. Administrative Change.

Staff Recommendation:

Staff removes the exclusion of paragraphs (4)(A) and (4)(I) for the HOME program as currently HOME NOFAs are available in open application cycles based on a first-come, first-served basis and the NOFAs clarify that third-party reports are due at the time of application submission, rather than the Housing Tax Credit Program due date.

Section 53.47(a)(2). Application and Award Limitations. Administrative Change.

Staff Recommendation:

This administrative change recommended has been added to this section by staff which provides clarification on the contract award amount and is adjusted to reflect the amount of administrative funds associated with the contract.

(2) The Contract award amount for disaster relief shall not exceed $520,000, including administrative costs, per state or federally declared disaster, or as may be otherwise allowed by the

Board. Only one Application per affected Unit of General Local Government may be submitted for each declared disaster. Public Housing Authorities (PHAs) and Nonprofit organizations may only act as an Applicant, in lieu of the Unit of General Local Government, if they are so designated by the affected Unit of General Local Government. If the disaster is a federally declared disaster, the Applicant may not submit an application or be funded until ninety (90) days have expired from the federal declaration date. Applications for disaster relief will only be accepted within six (6) months after the first day assistance under this program is made available.

Section 53.48. Application Review Process.

Comment:

Commenter recommends green building criteria be expanded to encourage that rehabilitation of existing homes be as energy efficient as possible, suggesting that language be added in Subchapter D involving green building criteria that could be awarded special consideration. For example under §53.48(2)(A), language could be added such as "Applications that are able to offer Green Building Amenities, such as those QAP §49.9(h)(4)(A)(ii)(XXV) and §49.9(i)(17), will be given special consideration." (16)

Staff Response:

If recommended and implemented at this time, the change would not be vetted properly through the rulemaking process. Additionally, since HOME funds are currently available through a non-competitive first-come, first-served basis, there are no points to be applied to this type of criteria and staff is uncertain of the definition of 'special consideration' as proposed by the commenter. No change is recommended is recommended at this time.

List of Commenters: (16) Lone Star Chapter of Sierra Club.

Board Response: The Board approved the final order adopting these amendments on November 13, 2008.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.45. Rental Housing Development (Multifamily) Application Requirements.

(a) Rental Housing Development site and development restrictions include all those items referred to in the Final Rule, and any additional items included in the NOFA for RHD.

(b) Developments involving New Construction will be limited to 252 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 and Rehabilitation or Rehabilitation only may exceed the maximum unit restrictions. Developments in Rural Areas are limited to no more than 80 units. The minimum number of units shall be 4 units.

(c) For funds being used for RHD, the Development Owner must establish a reserve account consistent with Texas Government Code, §2306.186, and as further described in §1.37 of this title.

(d) Unless further restricted or amended by the NOFA, Applications must comply with all of the current Qualified Allocation Plan and Rules in effect at the time of application's submission at 10 TAC §49.9(h), excluding paragraphs (4)(J), (11), (12), 14(G) and (15).

§53.47. Application and Award Limitations.

(a) The Department reserves the right to reduce the amount requested in an Application based on Program Activity or Project feasibility, underwriting analysis, or availability of funds.

(1) The Contract award amount, including administrative costs, shall not exceed the established amount in the NOFA.

(2) The Contract award amount for disaster relief shall not exceed $520,000, including administrative costs, per state or federally declared disaster, or as may be otherwise allowed by the Board. Only one Application per affected Unit of General Local Government may be submitted for each declared disaster. Public Housing Authorities (PHAs) and Nonprofit organizations may only act as an Applicant, in lieu of the Unit of General Local Government, if they are so designated by the affected Unit of General Local Government. If the disaster is a federally declared disaster, the Applicant may not submit an application or be funded until 90 days have expired from the federal declaration date. Applications for disaster relief will only be accepted within six (6) months after the first day assistance under this program is made available.

(3) The Contract Award amount for RHD or Single Family Development activities shall not exceed the established amount in the NOFA. The Department reserves the right to set maximum loan to value limitations and minimum Match requirements on all Development activities.

(4) The Contract award amount for CHDO Operating Expenses shall not exceed:

(A) the lesser of clauses (i) or (ii) of this subparagraph:

(i) fifty percent (50%) of the CHDO's total annual operating expenses in that fiscal year; or

(ii) five percent (5%) of the CHDO funds awarded for the Project from the CHDO Set-Aside; and

(B) $75,000, whichever is greater.

(C) An Applicant shall not receive more than one award of CHDO operating funds during the same fiscal year of the Department regardless of the number of Applications submitted.

(5) The Contract award amount for CHDO Predevelopment Loans may not exceed $50,000 per Application. Applicants may submit only one Application per NOFA to cover eligible costs.

(b) An Applicant may submit an Application to apply for additional funding as long as the Applicant is 100% committed on their current contract for the same activity.

§53.48. Application Review Process.

(a) Applications received by the Department in response to an Open Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept Applications on an ongoing basis, during the Application Acceptance Period specified in the NOFA or until such date when the Department makes notice to the public that an Open Application Cycle has been closed, whichever is earlier; and

(2) Each Application will be handled on a first-come, first-served basis as further described in this section. Each Application will be assigned a Received Date based on the date and time it is physically

received by the Division. Then each Application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on its Received Date unless it does not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over Applications that may have an earlier Received Date but that did not timely complete a phase of review.

(A) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two or Three will be reviewed for recommendation to the Board by the Committee.

(B) Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be reviewed for recommendation to the Board by the Committee.

(C) Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within 30 days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be reviewed for recommendation to the Board by the Committee.

(3) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Applications received by the Department in response to a Competitive Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept Applications on an ongoing basis during the Application Acceptance Period as specified in the NOFA;

(2) Applications submitted and accepted by the Department will be reviewed for eligibility, threshold and selection criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM. A comprehensive review of financial feasibility for RHD and Single Family Development Program Activities will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. If applicable, a review of the CHDO Certification Application will be performed. The Department will issue a notice of any Administrative Deficiencies for items reviewed within forty-five (45) days of the Received Date. If Administrative Deficiencies are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then five (5) points shall be deducted from the selection score for each additional day the Administrative Deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated; and

(3) Upon completion of review and no unresolved Administrative Deficiencies, the Application will be reviewed for recommendation to the Board by the Committee.

(c) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies including threshold and/or selection criteria documentation and/or financial feasibility analysis. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. To cure an Administrative Deficiency, an Applicant must provide a clarification, further definition or exposition of an issue, an explanation as to why an Applicant has provided certain information, or resolution of a discrepancy where an Applicant has provided conflicting information. An Administration Deficiency may not be cured by substantially changing an Application or providing any new unrequested information. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any Set-asides, increase their award amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in this title or by amendment of an Application after a commitment or allocation of HOME funds.

(d) Decline to Fund. The Department may decline to fund any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the De-

partment's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

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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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER E. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

10 TAC §53.50

The Texas Department of Housing and Community Affairs adopts amendments to 10 TAC Chapter 53, Subchapter E, §53.50, concerning Application Procedures for Certification of CHDO. The amended section is adopted without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7942) and will not be republished.

The amendments make changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations.

No comments were received regarding the adoption of the amendments.

The Board approved the final order adopting the amendments on November 13, 2008.

The amendments are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306.

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. AWARD AND CONTRACTS

10 TAC §§53.70 - 53.73

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter F, §§53.70 - 53.73, concerning the HOME Program Rule, without changes to the proposal as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7943) and will not be republished.

The repeal is adopted in order to allow adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2009 rule cycle.

No comments were received regarding the adoption of this repeal.

The Board approved the final order adopting this repeal on November 13, 2008.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

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SUBCHAPTER F. AWARDS AND CONTRACTS

10 TAC §§53.70 - 53.74

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 53, Subchapter F, §§53.70 - 53.74, concerning HOME Program Rule. Section 53.72 and §53.74 are adopted with changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7944). Sections 53.70, 53.71 and 53.73 are adopted without changes and will not be republished.

The adopted new sections make changes to the existing rules to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rules.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION.

Public comments and the Department's responses are presented in the order in which the subchapter and sections appear

in the chapter. Following the section number is the title of the section as it appears in the rule. Following the comment is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

§53.72. Pre-Award Costs.

Administrative Change.

Language in the Proposed Rule: Before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

Staff Changes:

Staff made an administrative change to be added to this section to provide clarification on the types of costs eligible for reimbursement according to the federal regulations and allows for reasonable reimbursement of costs associated with the program.

(b) Department authorized pre-award costs for pre-development costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred before the effective date of the Contract if the costs are in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

§53.74(a)(6). Contract Amendments.

Staff Changes:

Since the recommendation included in §53.1 will result in amendment requests to increase the contract amount by more than 25% because of the increased maximum amount of costs associated per housing unit for the OCC and HBA programs, staff recommends the Board allow the Executive Director to approve any increases greater than 25% of the original Contract or $50,000 which are a result of an amendment to be governed by this adopted rule. Staff made the following change to the rule:

(6) Increase in funds. In the case of a modification or amendment to the dollar amount of the Contract, such modification or amendment does not increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater. Modifications and/or amendments that increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval, except for increases that result in a dollar amount increase that is more than 25% of the original Contract amount on an existing Contract for which an Administrator has requested an amendment to be governed by all provisions of this chapter as allowed in §53.30 of this chapter.

Board Response: The Board approved the final order adopting the new sections on November 13, 2008.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.72. Pre-Award Costs.

(a) Before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

(b) Department authorized pre-award costs for pre-development costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred before the effective date of the Contract if the costs are in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

§53.74. Contract Amendments.

(a) Amendment requests to be approved by the Executive Director of the Department are allowable under the following circumstances:

(1) Time extensions. The Executive Director may collectively provide up to one six-month extension to the end date of any Contract. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual, non foreseeable, or extenuating circumstances that warrant more than a six-month extension. If the extension is longer than six months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension;

(2) Changes in Match. The Executive Director may grant approval of a modification or amendment to the dollar amount of the Match requirement, if such amendment that does not decrease the dollar amount by more than 25% of the original amount committed. In the cases where the reduction in Match is greater than 25% or significantly decreases the benefits to be received by the Department, in the estimation of the Executive Director, the modification or amendment will be presented to the Board for approval;

(3) Changes in Area Median Family Income (AMFI) levels. The Executive Director may grant approval of a modification or amendment to the AMFI levels of the households to be served under said contract, if Contract Administrator provides a statement relating to unusual, non-foreseeable, or extenuating circumstances that warrant such a request to be granted and the Executive Director determines that such request does not violate Department rules. In the case that the Executive Director determines that such request is not warranted and/or violates Department rules, the request will be presented to the Board for approval;

(4) Changes to Services Areas. The Executive Director may grant approval of the modification or amendment to the Service Area being served under said contract, if Contract Administrator provides a statement relating to unusual, non-foreseeable, or extenuating circumstances that warrant such a request to be granted and the Executive Director determines that does not violate Department rules. In the case that the Executive Director determines that such request is not warranted and/or violates Department rules, the request will be presented to the Board for approval;

(5) Changes in number of Households to serve. The Executive Director may grant approval of the modification or amendment to the reduction in the number of the Households to be served under said contract, if Contract Administrator provides a statement relating to unusual, non-foreseeable, or extenuating circumstances that warrant such request to be granted and the Executive Director determines that such request does not violate Department rules. In the case the Executive Director determines that such request is not warranted and/or violates Department rules, the request will be presented to the Board for approval; and

(6) Increase in funds. In the case of a modification or amendment to the dollar amount of the Contract, such modification or amendment does not increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater. Modifications and/or amendments that increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval, except for increases that result in a dollar amount increase that is more than 25% of the original Contract amount on an existing Contract for which an Administrator has requested an amendment to be governed by all provisions of this chapter as allowed in §53.30 of this chapter.

(b) If the Administrator or Development Owner fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.

(c) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of this chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.

(d) Accounting Requirements. Within sixty (60) days after the Contract end date, the Administrator or Development Owner shall provide a full accounting of funds expended under the terms of the Contract. Failure of an Administrator or Development Owner to provide full accounting of funds expended under the terms of a Contract shall be sufficient reason for the Department to deny any future Contract to the Administrator or Development Owner.

(e) Individual benchmarks. Each benchmark is an individual term and subject to the amendment processes. An interim benchmark extension may or may not extend the entire Contract at the Department's discretion.

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 17, 2008.

TRD-200805974
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 7, 2008
Proposal publication date: September 19, 2008
For further information, please call: (512) 475-3916

SUBCHAPTER G. LOANS AND CONTRACT ADMINISTRATION

10 TAC §§53.80 - 53.86

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapter G, §§53.80 - 53.86, concerning the HOME Program Rule, without changes to the proposal as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7946) and will not be republished.

The repeal is adopted in order to allow adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2009 rule cycle.

No comments were received regarding the adoption of this repeal.

The Board approved the final order adopting this repeal on November 13, 2008.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 19, 2008
For further information, please call: (512) 475-3916

10 TAC §§53.80 - 53.85

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 53, Subchapter G, §§53.80 - 53.85, concerning HOME Program Rule. Sections 53.80, 53.81, and 53.85 are adopted with changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7947). Sections 53.82 - 53.84 are adopted without changes and will not be republished.

The adopted new sections make changes to the existing rules to ensure compliance with all statutory requirements, formalize existing policy and guidelines contained in the HOME program manuals and include revisions of necessary policy and administrative changes to further enhance operations by deleting compliance penalty provisions from the rules.

SUMMARY OF COMMENTS, STAFF RESPONSE AND BOARD ACTION.

Public comments and the Department's responses are presented in the order in which the subchapter and sections appear in the chapter. Following the section number is the title of the section as it appears in the rule. Following the comment

is a parenthetical containing a number or series of numbers. Each number corresponds to a person who commented on the particular rule section. Following the identification of the section and related commenters is a summary of the comment and staff's response, including the reasons why the agency agreed or disagreed with the comment and a statement of the factual basis for the new section.

Public Comment.

§53.80(e)(1). Documents Supporting Mortgage Loans.

Administrative Change.

Staff Changes:

These administrative changes are made to clarify the requirements for these documents.

(1) A title report that evidences eligible forms of homeownership pursuant to §53.31(b) of this chapter and no tax lien, no child support lien, and no mechanic's or materialman's lien. The title report must be a non-insurance report of the property from the current owner's date of the last deed vesting title to the present, including complete deed information; grantees, grantors, execution and recording dates, recording references, and legal description, as well as all open mortgages/deed of trusts;

§53.81. General Contract Administration.

Administrative Change.

Staff Changes:

These administrative changes are made to clarify the contract administration requirements to ensure compliance with the Texas Residential Construction Commission requirements.

All Administrators and Development Owners must use the forms provided on the Department's website and comply with the Department's procedural and documentation requirements as outlined in the HOME Program Manual and in this section including:

(16) Ensure and verify that each building construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with Chapters 401 and 416 of the Texas Property Code;

(17) Ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with §426.003 of the Texas Property Code;

(21) Conduct appropriate property inspections and documentation in accordance with applicable program requirements. Ensure compliance with the Texas Residential Construction Commission inspection requirements under Title 16 of the Texas Property Code;

§53.85(a)(1). Administrative and Soft Costs Limitations.

Administrative Change.

Staff Changes:

This administrative change is made by staff to provides clarity regarding the amount of administrative funds available for the various contract and program types. The 6% administrative costs for contracts serving Persons with Disabilities was previously established and approved in the One Year Action Plan.

(1) Administrator must use funds for Administrative Costs in accordance with 24 CFR §92.207. For the OCC, HBA, and contract for deed conversion Program Activities, funds for Administrative Costs cannot exceed 4% of the total project costs for the entire Contract term. For the TBRA Program Activity, funds for Administrative Costs cannot exceed 4% of the total project funds per year of the Contract term. For Program Activities that are serving Persons with Disabilities, funds for Administrative Costs cannot exceed 6% of the total project costs for the entire Contract term.

§53.85 "Figure 10 TAC §53.85(a)(6)." Administrative and Soft Costs Limitations.

Comment:

Commenter states that to allow for adequate funds in the two categories of administrative and soft costs to manage projects, an overall increase of approximately $5,000 per grant is needed. (7)

Staff Response:

While administrative funds are based on a per contract amount, the soft cost limitations are based on a per project basis. Furthermore, an overall increase of $5,000 per grant is not justified or evaluated for cost reasonableness. No change is made.

Comment:

Commenter requests an increase in costs for Application Intake and Processes from $600 to $800 per Activity. Commenter states this line item requires extensive time to meet with all prospective applicants, often on numerous occasions. The process requires much personal assistance, which many times due to age or educational experience, must be assisted as the applicant cannot collect the required documentation themselves. Additionally, due to the length of time it takes to move through bidding and loan process, often re-verification of income has to occur. (7)

Staff Response:

Staff has carefully examined this proposed increase and due to lack of substantial data and the $100 increase already proposed, does not make a change to the rule at this time.

Comment:

Commenter requests an increase in the cost for Construction and Disbursement Documentation Preparation from $250 to $400 per Activity. Commenter states this line item includes preparing subcontracts between the Contract Administrators and builders (which was not required before the CA became the contractor). This estimate also includes draw and match preparation, which can be a lengthy process. Additionally, each project now includes three hard cost draws at fifty percent (50%) construction complete, one hundred percent (100%) construction complete and final ten percent (10%) retainage. (7)

Staff Response:

The definition of this line item does not include the preparation of subcontracts between the Contract Administrator and builder. The line item consists primarily of data entry into the Department's Contract System and the completion of contract templates required for draw processing. Staff has reviewed the request and does not make a change.

Comment:

Commenter requests an increase to the cost for Environmental Reviews from $400 to $500 per Activity. Commenter states that this recommendation more accurately reflects the time and documentation required to complete the tiering process which

involves both an overall review of the area and site specific reviews of each property. (7)

Staff Response:

Staff has reviewed the request and is of the opinion that $400 per Activity to complete the environmental review requirements is sufficient. This amount is also very reasonable when compared to historical requests for reimbursements for this type of soft cost, for which the documentation requirements have not increased. No change is made at this time.

Comment:

Commenter requests an increase in the cost to provide Information Services from $200 to $600 per Activity. Commenter states that this recommendation is the most undervalued on the list because from the time the home is completed and turned over to the assisted homeowner, each family requires much personal attention and many hours of communication and assistance. (7)

Staff Response:

This line item is defined as the cost incurred to provide information to homeowners, prospective homebuyers and/or tenants and consists primarily of information as it relates to Fair Housing, which is not applicable to OCC, loan procedures, warranties, and lead-based paint notification. While much of the costs associated with time and personal attention spent with homeowners is included in the Application intake and processing line item, staff agrees in part with the recommended increase and increases this line item maximum by $200 in order to offset costs incurred with providing homeowners with loan procedures.

§53.85 "Figure 10 TAC §53.85(a)(6)." Administrative and Soft Costs Limitations.

Administrative Change.

Staff Changes:

Regarding a clarification to the maximum amount of project soft costs associated with the plans and specification manual. Staff has researched this cost and made a change from $2,000 to $700 to this line item maximum based on information obtained from the Marshall and Swift Residential Cost Handbook and historical reimbursement requests.

List of Commenters: (7) Langford Community Management Services.

Board Response: The Board approved the final order adopting the new sections on November 13, 2008.

The new sections are adopted pursuant to authority granted in Chapter 2306, Texas Government Code; specifically §2306.053 which grants the Department general rulemaking authority to carry out the powers expressly granted or necessarily implied by Chapter 2306, and §2306.111(a) which requires the Department to administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12704 et seq.) or any other affordable housing program.

§53.80. Documents Supporting Mortgage Loans.

(a) Administrators and Development Owners must not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures and Loan closing with the Department.

(b) A mortgage Loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage that creates a lien on the housing development and on all real property that constitutes the site of or that relates to the housing development.

(c) A note or bond and a mortgage or deed of trust:

(1) must contain provisions satisfactory to the Department;

(2) must be in a form satisfactory to the department; and

(3) may contain exculpatory provisions relieving the borrower or its principal from personal liability if the department agrees.

(d) For each Loan made for the Development of multifamily housing with funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 USC §§12701, et seq.), the Department shall obtain a mortgagee's title policy in the amount of the loan. The Department may not designate a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. The borrower shall select the title insurance company to close the loan and to provide the mortgagee title policy.

(e) Documentation required for OCC and HBA with Rehabilitation Loans: The Administrator must ensure the following documents are submitted to the Department in order to request Loan documents be prepared for the Household:

(1) A title report that evidences eligible forms of homeownership pursuant to §53.31(b) of this chapter and no tax lien, no child support lien, and no mechanic's or materialman's lien. The title report must be a non-insurance report of the property from the current owner's date of the last deed vesting title to the present, including complete deed information; grantees, grantors, execution and recording dates, recording references, and legal description, as well as all open mortgages/deed of trusts;

(2) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(3) Life event documentation, as applicable;

(4) A copy of the original contract for deed, for contract for deed conversion Loan; and

(5) A current payoff statement, for contract for deed conversion Loan.

(f) Trailing documentation requirements for Loans. Within ninety (90) days after the Loan closing date, the Administrator or Development Owner must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests.

§53.81. General Contract Administration.

All Administrators and Development Owners must use the forms provided on the Department's website and comply with the Department's procedural and documentation requirements as outlined in the HOME Program Manual and in this section including:

(1) Contract must be signed and executed by all appropriate authorized parties;

(2) Attend training as required by the Department;

(3) Develop and comply with written procurement selection criteria and committees;

(4) Procure consultants, if applicable. Consultants may not participate in or direct any part of the process for procuring consultants;

(5) Complete all applicable Department Contract System access request forms and requirements;

(6) Perform environmental clearance procedures before committing or expending funds to a Project or Activity, performing any construction activities, including demolition, or the occurrence of the Loan closing, if applicable;

(7) Develop and comply with written accounting, reporting, filing, and documentation procedures;

(8) Develop and comply with written applicant intake and selection criteria for and ensure program eligibility which must include, but is not limited to:

(A) Homeownership, if applicable;

(B) Income eligibility;

(C) Assisted Households must be located within the Administrator's Service Area, as defined by the Contract;

(D) Property taxes are current, if applicable; and

(E) Assist Special Needs Households, if applicable;

(9) Develop and comply with affirmative marketing procedures in accordance with the Final Rule;

(10) Complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application;

(11) To ensure compliance with the Texas Comptroller of Public Accountants requirements, Contract Administrators are required to ensure the applicant Household does not owe a debt to the State of Texas including, but not limited to, tax liens, child support liens, or student loan delinquencies;

(12) Ensure that no Conflict of Interest exists between Households to be assisted and Persons designated to receive or assist with the application intake process;

(13) Document and verify all income and asset eligibility requirements for the Household to be assisted;

(14) Ensure compliance with applicable audit certification requirements;

(15) Ensure that the demolition and removal of all dilapidated units on the lot occurs prior to the Household's occupancy of the Newly Constructed or Rehabilitated housing unit;

(16) Ensure and verify that each building construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with Chapters 401 and 416 of the Texas Property Code;

(17) Ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with §426.003 of the Texas Property Code;

(18) Provide building construction contractor oversight and ensure builder's risk coverage is provided;

(19) Ensure that the demolition of any housing unit does not occur less than six (6) months prior to the Contract end date;

(20) Ensure compliance with applicable construction or property standards and lead-based paint requirements;

(21) Conduct appropriate property inspections and documentation in accordance with applicable program requirements. Ensure compliance with the Texas Residential Construction Commission inspection requirements under Title 16 of the Texas Property Code;

(22) Submit required documentation and electronic requests for Project setups and disbursement requests to the Department;

(23) Submit support documentation for Project setups and disbursement requests within thirty (30) days of electronic submission to the Department;

(24) Submit all Project setups and support documentation for Households to be assisted no later than ninety (90) days prior to the Contract end date. In the event that a loan closing is required for single family Rehabilitation or Reconstruction, non-development activities, all Project setups and support documentation must be submitted no later than one hundred eighty (180) days prior to the Contract end date;

(25) Provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(26) Provide certification that all contractors, consulting firms, Administrators, and Development Owners will sign an affidavit to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(27) If required or requested, provide reasonable Match and submit required documentation to the Department;

(28) Not retain Program Income of any kind, including Program Income to fund other eligible HOME Activities;

(29) Submit any Program Income received to the Department within ten (10) days of receipt;

(30) Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of Administrator or Development Owner, Activity address and Activity number referenced on the check;

(31) Submit required documentation for Project completion reports and certificate of Contract Completion no later than sixty (60) days from the Contract end date; and

(32) Complete the terms of the Contract.

§53.85. Administrative and Soft Costs Limitations.

(a) The Department has established cost guidelines and limitations for administrative and soft costs related to the OCC, TBRA, and HBA Program Activities.

(1) Administrator must use funds for Administrative Costs in accordance with 24 CFR §92.207. For the OCC, HBA, and contract for deed conversion Program Activities, funds for Administrative Costs cannot exceed 4% of the total project costs for the entire Contract term. For the TBRA Program Activity, funds for Administrative Costs cannot exceed 4% of the total project funds per year of the Contract term. For Program Activities that are serving Persons with Disabilities, funds for Administrative Costs cannot exceed 6% of the total project costs for the entire Contract term.

(2) With the exception of Administrative Costs per Contract, these costs are maximums per Activity or Project and may not be exceeded without approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation and cost categories and limitations not identified in this section.

(3) Contract Administrators must certify that the amount being disbursed is for the actual amount of costs.

(4) Costs that may be categorized as either a project soft cost or an administrative cost are identified below. No duplicate disbursement of costs is allowed. Costs may only be disbursed as either a project soft cost or administrative cost but not both. Additionally, costs may only be disbursed once per occurrence when providing both acquisition and construction type of assistance to the same Project or Activity as may take place with, but not limited to, contract for deed conversions.

(5) Unless otherwise noted, all items are limited to one (1) occurrence per Project or Activity.

(6) Third-party project soft costs related to loan closing requirements, such as appraisals, title reports or insurance, tax certificates, and recording fees, are not subject to a maximum per Activity or Project. However, these soft costs are subject to the maximum amount of assistance established for the Program Activity.
Figure: 10 TAC §53.85(a)(6)

(b) The allowable activities for each cost category are defined as follows:

(1) Administrative costs are costs incurred for activities performed directly by the Administrator and include general management and oversight, salaries, wages and related costs of staff, travel costs incurred for official business in carrying out the Contract, public information, and other costs required for the administration of the program such as purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (not purchase) of office space;

(2) Affirmative marketing plan is the cost incurred to develop a written plan for ensuring that marketing, advertising, and outreach activities are provided to all protected classes and to the populations being served by the Contract. This includes the development of advertising materials and hand-outs and public presentation;

(3) Application intake and processing is the cost incurred for the completion of all intake application documentation and forms, verification of all sources of income, employment verification, asset verification and imputation and re-verification of all expired documentation. This includes all Department-required forms, worksheets, addenda and certifications required for the household's application intake and processing;

(4) Construction and disbursement documentation preparation is the cost incurred in the preparation of forms required by the Department that are related to construction or disbursement documentation and include electronic entry into the TDHCA Contract System, support documentation preparation and completion of Department-required forms including, but not limited to, the Contractor Request for Payment, Lien Waiver Affidavits, Final Bills Paid Affidavit and Certification of Completion;

(5) Environmental review is the cost incurred for the preparation and completion of all required forms, checklists and certifications, publication activities and Request for Release of Funds and Finding of No Significant Impact and Eight Step Process, if applicable;

(6) Exempt administrative environmental is the cost incurred in the completion of an exemption form for administrative expenses;

(7) Final inspection is the cost incurred in performing a final walk through and physical inspection of the assisted housing unit noting any deficient items that must be corrected before final payment and the completion of any Department-required forms or checklists;

(8) Financial management is the cost incurred in the management of all project and program accounts using a fund type accounting system that can trace each expense to an individual Project or to the program as a whole and ensures compliance with OMB circulars. A written or printed journal of all transactions including receipt and disbursement of funds should be included;

(9) Homebuyer counseling is the cost incurred to provide a minimum of eight hours of counseling provided by a certified homebuyer counselor. Instruction may include, but is not limited to, financial management, credit management, homebuyer education, and/or job training;

(10) Information services is the cost incurred to provide information to homeowners, prospective homebuyer and/or tenants. These may include the following:

(A) Fair housing--cost incurred to provide information to prospective homebuyers and tenants (not applicable to OCC);

(B) Loan procedures--cost incurred to provide information pertaining to fair lending practices, loan requirements, and closing procedures to participants in OCC and HBA (not applicable to TBRA);

(C) Warranty (Project cost only)--cost incurred to provide an explanation of the builder's homeowner warranty (must comply with Texas Residential Construction Commission requirements) to households assisted with Reconstruction or Rehabilitation activities;

(D) Lead-based paint--cost incurred to provide lead-based paint hazard notification to all applicants in all HOME Program Activities;

(11) Initial inspection is the cost incurred in the completion of the initial physical inspection of the housing unit to be assisted and Department-required forms and checklists. The inspection must identify all health and safety concerns regarding the housing unit, all sub-standard conditions that require repair or replacement to comply with applicable codes and standards and the TMCS, and provide enough detail to complete a work write-up, and if applicable, a justification of Reconstruction;

(12) Plans is the cost incurred to obtain a complete set of plans, which shall include a site plan for each housing unit showing known easements and lot set-backs, a floor plan, a front elevation, a foundation plan, a plumbing and electrical plan and a mechanical and energy efficiency plan. If these plans are purchased from or donated by a licensed architect or engineer they should bear the appropriate stamp. While builders may require less complete plan sets and it is understood that some of these details may be combined on the same sheet, any plans set that does not include this level of detail will be pro-rated accordingly;

(13) Pre-construction conference is the cost incurred in conducting a meeting with the homeowner and building construction contractor to explain and discuss the construction process being undertaken. This meeting should include a description of construction activities and procedures, expectations of the final product, an explanation of the roles and duties for all parties, detail and review of the timelines and contractual milestones, required access and use of utilities, provision of appropriate security measures, selection of products and improvements to be provided, and a discussion of appropriate handicap accessibility features;

(14) Procurement of contractor is the cost incurred in the preparation of bid documents, pre-bid advertising, conducting of the pre-bid conference, the verification of required builder certifications, conducting of the walk-through of housing units to be assisted, conducting checks of bidder qualifications and references, conducting bid

opening including keeping minutes and tabulations, the review of the bids, conducting contract negotiation and verification, the notification of award and the completion of any Department-required forms;

(15) Procurement of professional service provider is the cost incurred to procure a professional service provider (i.e. consultant). The Administrator must use negotiated bidding procedures for the procurement of professional service providers (i.e. consultants) and provide for independent procurement of professional service providers (i.e. consultants may not participate in any aspect of procuring consultants);

(16) Progress inspections is the cost incurred in performing inspections at logical points during the construction process or prior to approving each draw that verify quality and completeness of work to date and are signed by the inspector and Contract Administrator. Upon completion of the progress inspection, the Contract Administrator must send a copy of the completed inspection report to the homeowner. The homeowner must also sign to acknowledge receipt of the completed Progress Inspection Report. Logical points of inspection include but are not limited to:

(A) Foundation--prior to pouring a monolithic foundation and after initial curing or alternatively after completion of piers;

(B) Framing--completion of framing;

(C) Rough-in--after completion of electrical and plumbing but before covering and placement of fixtures; and

(D) Substantial completion;

(17) Progress inspections should each require at least one hour and include inspection forms, filed notes, sketches, and/or photographs adequate for verification of that stage of completion;

(18) Project documentation preparation is the cost incurred in the preparation of forms required by the Department that are not related to income eligibility or construction and include, but are not limited to, the TDHCA Contract System Access Request, Direct Deposit Authorization, Texas Application for Payee Identification, and Audit Certification;

(19) Property inspections is the cost incurred to perform an inspection of the subject property in order to certify that no substandard conditions exist according to TMCS using the Department's forms;

(20) Punch list verification inspection is the cost incurred in performing a final physical inspection of the assisted housing unit to verify the completion of punch list items only;

(21) Recordkeeping is the cost incurred to develop, prepare and maintain a recordkeeping system in the order prescribed by the Department which includes three separate types of filing for program, environmental, and project areas;

(22) Schedule of values is the cost incurred to prepare a line-item description of each work activity and its associated cost and enter electronically into the Department's Contract System as the budget;

(23) Specification manual is the cost incurred to prepare or obtain a single generic manual to be used for multiple sites or projects detailing the methods and materials to be used on all construction jobs. The homeowner's choices may be included but should be detailed for each job. All trade areas and construction activities must be included in the specification manual. In cases where there are no local requirements for specifications and TMCS are used, no additional cost should be requested for disbursement;

(24) Work write-up is the cost incurred to prepare or obtain a complete description of the work activity specific to Rehabilitation required to bring the entire structure into compliance with the applicable construction standards. It must include all units of measurement, materials to be used, methods of application, and all necessary construction detail and/or may be used in conjunction with a specification manual; and

(25) Work write-up/cost estimate is the cost incurred in performing the Feasibility Analysis which is a budgetary justification for Reconstruction which compares the cost of Rehabilitation to the replacement costs of a housing unit and in the completion of Department-required forms. The analysis must include a summary of the steps and costs required to correct the deficiencies identified in the initial inspection.

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 17, 2008.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.412

The Public Utility Commission of Texas (commission) adopts an amendment to §26.412, relating to Lifeline Service Program, with changes to the proposed text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7122). The amendment increases the Lifeline Discount Amount (LDA) for eligible customers of Eligible Telecommunications Providers (ETPs) operating in the service areas of AT&T Texas, Verizon, Embarq, and Windstream, or their successors, by an amount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the four companies mentioned above as a result of the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Final Order filed on April 25, 2008 in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. Subst. R. §26.403.* This amendment is adopted under Project Number 35629.

The commission received comments on the amendment from Embarq (a/k/a United Telephone Company of Texas, Inc. and Central Telephone Company of Texas, Inc.), the Office of Public Utility Counsel (OPC), and Verizon (GTE Southwest Incorporated d/b/a Verizon Southwest).

Comments

Embarq, OPC, and Verizon stated that the amendment properly reflects the settlement agreement in Docket Number 34723. Embarq stated that the amendment addresses the methodology for calculating the additional Lifeline support amounts and the state support amounts, and provides a timetable for filing compliance tariffs and appropriate effective dates. Embarq stated its support for the amendment and that the methodology proposed is simple to follow and implement. OPC stated that it was very supportive of the amendment and that it will significantly benefit low-income customers and maintain the affordability of telecommunications services for those customers. OPC also stated that the amendment eases administrative expenses while maximizing the benefit to eligible customers. Verizon stated that the amendment properly reflects the parties' settlement and suggested minor changes for the sake of clarity and uniformity.

Commission Response

The commission declines to move the placement of "Settled Discount" as Verizon proposed, because Verizon's proposal would make the definition less clear by placing the defined term within the definition, before numbered clauses (i) and (ii), which form part of the definition. The commission also declines to replace "actual" with "approved," because the rule is clear with the inclusion of "actual" and "actual" was used in the Unanimous Settlement Agreement approved by the commission in Docket Number 34723.

The commission has further determined that: (1) the defined terms used in the rule should be changed to more closely reflect the language used in Docket Number 34723 and (2) subsection (f) should be amended to clarify and distinguish the additional state reduction with federal matching in (f)(1)(C) and (f)(2)(A)(iii) from the additional state support resulting from Docket Number 34723. The commission has determined that the following non-substantive modifications to the rule as originally proposed in the Proposal for Publication are necessary:

1. Some of the defined terms have been changed to more closely align with the language in Docket Number 34723 as follows: (a) "Settling Parties" is now referred to as "THCUSP ILECs," (b) "Settled Discount" is now referred to as "THCUSP ILEC Area Discount," and (c) "Settled Rate Increase" is now referred to as "Rate Increase."

2. There is no change to subsection (f)(1)(C) resulting from this rulemaking as originally proposed.

3. New subsection (f)(1)(F) has been created containing all language relating to the additional discount resulting from Docket Number 34723. This change clarifies that the discount in subsection (f)(1)(C) is the additional state rate reduction to which federal matching applies, while the discount in new subsection (f)(1)(F) is not subject to federal matching.

4. Proposed clauses in subsection (f)(1)(C) have been renumbered and reordered as clauses under new subsection (f)(1)(F).

5. A new clause (v) has been added to new subsection (f)(1)(F) to clarify that competitive local exchange carriers operating in the service areas of THCUSP ILECs are required to implement any applicable THCUSP ILEC Area Discount and are required to file a tariff accordingly.

6. Subsection (f)(2)(B) has been divided into three clauses (i, ii and iii) to distinguish (i) the support amounts for which federal matching is available from (ii) those for which federal matching is not available, and (iii) clarifying that an ETP that is also an ETC will continue to receive the support amounts in subparagraph (A) of subsection (f)(2).

7. Clause (v) of subsection (f)(2)(C) has been divided into two clauses (v and vi) to distinguish between (v) the support amounts for which federal matching is available and (vi) those for which federal matching is not available.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2008) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically §56.021, which provides the commission the authority to adopt and enforce rules relating to the reimbursement of telecommunications carriers for the provision of lifeline service.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §56.021.

§26.412. Lifeline Service Program.

(a) Scope and purpose. Through this section, the commission seeks to identify and make available Lifeline Service to all qualifying customers and households, establish a procedure for Lifeline Automatic Enrollment and Lifeline Self-Enrollment, and define the responsibilities of all providers of local exchange telephone service that provide Lifeline Service, qualified customers, the Texas Health and Human Services Commission (HHSC), and the Low-Income Discount Administrator (LIDA) Program.

(b) Applicability. This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:

(1) ETC--A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds).

(2) ETP--A provider designated as an ETP as defined by §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Resale ETP--A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as an ETP as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

(4) Non-ETP/ETC Certificated Provider--Any certificated provider of local exchange telephone service that chooses not to become an ETP or an ETC as defined by §§26.417, 26.418, or 26.419 of this title.

(c) Definitions.

(1) Qualifying low-income customer--A customer who meets the qualifications for Lifeline Service, as specified in subsection (d) of this section.

(2) Toll blocking--A service provided by Lifeline providers that let customers elect not to allow the completion of outgoing toll calls from their telephone.

(3) Toll control--A service provided by Lifeline providers that allow customers to specify a certain amount of toll usage that may be incurred on their telephone account per month or per billing cycle.

(4) Toll limitation--Denotes either toll blocking or toll control for Lifeline providers that are incapable of providing both services. For Lifeline providers that are capable of providing both services, "toll limitation" denotes both toll blocking as defined in paragraph (2) of this subsection and toll control as defined in paragraph (3) of this subsection.

(5) Eligible resident of Tribal lands--A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on or near a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a "reservation" is defined as any federally recognized Indian tribe's reservation, pueblo, or colony.

(6) Income--As defined in 47 C.F.R. §54.400(f) includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(d) Customer Eligibility Requirements. A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the LIDA. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.

(1) The customer's household income is at or below 150% of the federal poverty guidelines as published by the United States Department of Health and Human Services and updated annually;

(2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code; or

(3) A customer is an eligible resident of tribal lands as defined in subsection (c)(5) of this section.

(e) Lifeline Service Program. Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:

(1) Designated Lifeline services. Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101(a)(1) - (9) (relating to Supported Services for Rural, Insular and High Cost Areas).

(2) Toll limitation. Lifeline providers shall offer toll limitation to all qualifying low-income customers at the time the customer subscribes to Lifeline Service. If the customer elects to receive toll limitation that service shall become part of the customer's Lifeline Service and the customer's monthly bill will not be increased by otherwise applicable toll limitation charges.

(3) Disconnection of service.

(A) Disconnection prohibition. Lifeline providers may not disconnect Lifeline Service for non-payment of toll charges.

(B) Discontinuance of Lifeline Discounts for customers automatically enrolled. The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days for renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self enroll with LIDA upon the expiration of their automatic enrollment.

(C) Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with LIDA for an additional seven months.

(4) Number Portability. Consistent with 47 C.F.R. §52.33(a)(1)(C), Lifeline providers may not charge Lifeline customers a monthly number-portability charge.

(5) Service deposit prohibition. If the qualifying low-income customer voluntarily elects toll limitation from the Lifeline provider, the Lifeline provider may not collect a service deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits) in order to initiate Lifeline Service.

(6) Ancillary services. A Lifeline provider shall provide customers who apply for or receive Lifeline Service access to available vertical services or custom calling features, including caller ID, call waiting, and call blocking, at the same price as other consumers. Lifeline discounts shall only apply to that portion of the bill that is for basic network services.

(7) Bundled packages. A Lifeline provider shall provide customers who apply to receive Lifeline Service access to bundled packages at the same price as other consumers less the Lifeline discount that shall only apply to that portion of the bundled package bill that is for basic network service.

(f) Lifeline support and recovery of support amounts.

(1) Lifeline discount amounts. All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

(A) Waiver of the monthly subscriber line charge (SLC)--Lifeline providers shall grant a waiver of the monthly SLC at the rate tariffed by the incumbent local exchange carrier serving the area of the qualifying low-income customer. If the ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the Incumbent Local Exchange Carrier (ILEC) serving the area of the qualifying low-income customer.

(B) Federally approved $1.75 reduction--A Lifeline provider shall give a qualifying low-income customer a federally approved reduction of $1.75 in the monthly amount of intrastate charges paid pursuant to 47 C.F.R. §54.403 (relating to Lifeline Support Amount).

(C) Additional state reduction with federal matching--A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of $3.50 in the monthly amount of intrastate charges.

(D) Federal match of state reduction--A Lifeline provider shall provide a further federally approved reduction equal to one-half the amount of the state-mandated reduction in subparagraph (C) of this paragraph up to a maximum of $1.75.

(E) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(F) Additional Texas High Cost Universal Service Plan (THCUSP) ILEC Area Discount--

(i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide, a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. Subst. R. §26.403* (Rate Increase).

(ii) A THCUSP ILEC Area Discount shall be calculated by a THCUSP ILEC on the basis of the weighted average of the Rate Increase(s). The calculation of the weighted average of the Rate Increase(s) shall use a denominator that is the sum of all PURA Chapter 58 regulated residential lines with Rate Increases, and shall use a numerator that is the sum of each product that results from multiplying the number of PURA Chapter 58 regulated residential lines affected by each discrete Rate Increase times the corresponding Rate Increase. The weighted average of the Rate Increase(s) calculation shall be included in the tariff filing made to implement the THCUSP ILEC AREA Discount.

(iii) A THCUSP ILEC Area Discount shall be provided to all qualifying Lifeline customers who are located in the service area of the THCUSP ILEC that has implemented the corresponding Rate Increase.

(iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a Rate Increase.

(v) A competitive local exchange carrier (CLEC) Lifeline provider operating in the service area of a THCUSP ILEC shall file with the commission tariffs or price lists implementing the appropriate THCUSP ILEC Area Discount.

(vi) The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding Rate Increase.

(2) Lifeline support amounts. The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection:

(A) ETC--Pursuant to 47 C.F.R. §54.403(a), the federal Lifeline support an ETC shall receive is:

(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service.

(ii) Additional federal Lifeline support in the amount of $1.75 per month.

(iii) Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month.

(iv) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).

(B) ETP--

(i) An ETP shall receive state support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection.

(ii) An ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(iii) If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.

(C) Resale ETP--A resale ETP shall receive Lifeline Service support equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The Texas Universal Service Fund (TUSF), regardless of whether the Lifeline Service Discount is state or federally mandated, will provide all Lifeline Service support.

(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. If the Resale ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the ILEC serving the area of the qualifying low-income customer;

(ii) Additional federally mandated Lifeline support in the amount of $1.75 per month;

(iii) Additional federally mandated Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month;

(iv) Additional federally mandated Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e);

(v) A resale ETP shall receive state-mandated support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection; and

(vi) A Resale ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.

(D) Non-ETP/ETC--A Non-ETP/ETC is not eligible to receive any state or federally mandated Lifeline support.

(g) Obligations of the customer and the Lifeline provider.

(1) Obligations of the customer.

(A) Customers who meet the low-income requirement for qualification but do not receive benefits under the programs listed in subsection (d) of this section may provide the LIDA with self-enrollment for Lifeline benefits.

(B) Customers receiving benefits under the programs listed in subsection (d) of this section and who have telephone service will be subject to the Lifeline automatic enrollment procedures as provided by the LIDA unless they provide the LIDA with a request to be excluded from Lifeline Service.

(C) Customers receiving benefits under the programs listed in subsection (d) of this section and who do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(D) Opportunity for contest.

(i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.

(ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.

(iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(2) Obligations of Lifeline providers.

(A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.

(i) A Lifeline provider shall identify, on the initial database provided by the LIDA, those customers to whom it is providing telephone service and shall begin reduced billing for those qualifying low-income customers.

(ii) The eligible customer shall not be charged for changes in telephone service arrangements that are made in order to qualify for Lifeline Service, or for service order charges associated with transferring the account into Lifeline Service. If the eligible customer changes the telephone service, the Lifeline provider shall begin reduced billing at the time the change of service becomes effective.

(iii) Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.

(iv) The LIDA shall provide a self-enrollment form by direct mail at the customer's request. The LIDA shall maintain customers' self-enrollment forms and provide a database of self-enrolling customers to all Lifeline providers.

(B) Tariff Requirement. Each Lifeline provider shall file a tariff to implement Lifeline Service, or revise its existing tariff for compliance with this section and with applicable law, including subsection (f)(1)(C) of this section.

(C) Reporting requirements. Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information:

(i) Initial reporting requirements. Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that its Lifeline Service plan meets the requirements of this section.

(ii) Monthly reporting requirements. Lifeline providers shall report monthly to the TUSF administrator the total number of qualified low-income customers to whom Lifeline Service was provided for the month by the Lifeline providers. Resale ETPs shall not report any customers whose Lifeline Services were purchased from an ILEC as a wholesale Lifeline Service offering. The ILEC from whom these lines were purchased will include those customers in its total number of qualified low-income customers reported to the TUSF administrator. Non-ETP Lifeline providers are excluded from this reporting requirement since they have elected not to receive any type of Lifeline support.

(iii) Other reporting requirements. Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF. Non-ETP Lifeline providers may be required to report certain information to the commission but will not be required to submit information to the TUSF administrator since they have elected not to receive any type of Lifeline support.

(iv) ETPs shall file the following information with the administrator of the Federal Lifeline Program. Non-ETP Lifeline providers are exempt from this requirement.

(I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);

(II) the number of qualifying low-income customers served by the ETP;

(III) the amount of state assistance; and

(IV) other information required by the administrator of the Federal Lifeline Program.

(D) Notice Requirement. A Lifeline provider shall provide the following notices of Lifeline Service:

(i) Notice of Lifeline Service in any directory it distributes to its customers advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format;

(iii) Inform all customers both orally and in writing of the existence of the Lifeline Service program when they request or initiate service or change service locations or providers. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its directory, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format; and

(iv) Shall publicize the availability of Lifeline Service in a manner reasonably designed to reach those likely to qualify for the service.

(E) Confidentiality agreements. Each Lifeline provider must execute a confidentiality agreement with the LIDA prior to receiving the LIDA's eligibility database. The agreement will specify that client information is released by the LIDA to the Lifeline provider for the sole purpose of providing Lifeline Service to eligible customers and that the information cannot be released by the Lifeline provider or be used by the Lifeline provider for any other purpose.

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, 2008.

TRD-200805947
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 4, 2008
Proposal publication date: August 29, 2008
For further information, please call: (512) 936-7223

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.80

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code ("TAC"), Chapter 75, §75.80, regarding the Air Conditioning and Refrigeration program fees for technicians. The amendments are adopted without changes to the proposed text as published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7124) and will not be republished.

The Commission establishes fees for programs regulated by the Texas Department of Licensing and Regulation ("Department"). These program fees include a revised or duplicate fee for licenses and registrations that need to be updated or replaced. The revised or duplicate fee is usually less than, but in some cases the same as, the original or renewal application fees. The revised or duplicate fee for most licenses and registrations is $25.

The amendments to §75.80 establish a $15 revised or duplicate fee for both technician registrations and technician certifications. The fee is less than the usual $25 revised or duplicate fee, because the original and renewal application fees for technician registrations is $20, and the original application fee for technician certifications is $15. The original and renewal application fees for technicians are lower than the original and renewal application fees for other licenses and registrations, which have the $25 revised or duplicate fee.

The Department is required to set fees in amounts reasonable and necessary to cover the costs of administering the programs under its jurisdiction. The revised or duplicate fee for technicians is sufficient to cover the costs and not adversely affect the administration and enforcement of the Air Conditioning and Refrigeration program.

In addition to adding the new duplicate or revised fee, the amendments to §75.80 also modify the structure of the rule to separate fees for contractors, technicians, and certificates of registration for refrigerants into distinct subsections within the rule. The amendments also clarify that all application fees are non-refundable.

The rule proposal was published in the *Texas Register* on August 29, 2008. The public comment period closed on September 29, 2008. The Department did not receive any public comments on the proposed amendments to the existing rule.

The Air Conditioning and Refrigeration Contractors Advisory Board discussed the amendments at its August 13, 2008, meeting and recommended to the Commission that the amendments be adopted.

The amendments are adopted under Texas Occupations Code, Chapter 1302 and Chapter 51, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1302 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

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

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

TRD-200805886
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2008
Proposal publication date: August 29, 2008
For further information, please call: (512) 463-7348

TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy adopts an amendment to §523.140, concerning Program Standards, without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8478) and will not be republished.

The section establishes instructions for sponsors in structuring their continuing education programs.

The amendment will emphasize advanced documentation required when a course is posted for CPE credit.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on November 13, 2008.

TRD-200805925
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 3, 2008
Proposal publication date: October 10, 2008
For further information, please call: (512) 305-7848

22 TAC §523.143

The Texas State Board of Public Accountancy adopts an amendment to §523.143, concerning Sponsor's Record, without changes to the proposed text as published in the October 10, 2008, issue of the *Texas Register* (33 TexReg 8479) and will not be republished.

The section establishes the record keeping requirements that continuing education sponsors must follow.

The amendment will emphasize the documents required to be kept by the sponsor.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on November 13, 2008.

TRD-200805926
J. Randel (Jerry) Hill
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Effective date: December 3, 2008
Proposal publication date: October 10, 2008
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER F. SEXUALLY TRANSMITTED DISEASES INCLUDING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV)

25 TAC §§97.135 - 97.138, 97.140 - 97.146

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§97.135 - 97.138 and §§97.140 - 97.146, concerning Sexually Transmitted Diseases (STD) Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) without changes to the proposed text as published in the May 23, 2008, issue of the *Texas Register* (33 TexReg 4075), and the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 97.135 - 97.138 and §§97.140 - 97.146 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Amendments are adopted for these rules to more efficiently track statutory requirements, to clarify and update the rules, and to improve readability.

SECTION-BY-SECTION SUMMARY

The department adopts amendments to §§97.135 - 97.138 and §§97.140 - 97.146 to more efficiently track statutory requirements, to clarify and update the rules, and to improve readability.

Amendments at §97.135(a)(1)(A) add language to better reflect the content of the materials referenced in Health and Safety Code, §81.090(k), update the agency name, and improve readability. Amendments at §97.135(a)(1)(B)(ii) improve clarity and readability. Amendments at §97.135(a)(1)(C) improve clarity by identifying the Clinical Laboratory Improvement Amendments of 1988 (CLIA) as a federal law, and improve readability. Amendments at §97.135(a)(1)(D) add language to reflect requirements at Health and Safety Code, §81.090(a)(3). Amendments at §97.135(a)(2)(A) update the agency name and improve readability. Amendments at §97.135(a)(2)(B)(ii) improve clarity and readability. Amendments at §97.135(a)(2)(C) improve clarity by identifying CLIA as a federal law, and improve readability. Amendments at §97.135(a)(4)(A) add language to better reflect the requirements at Health and Safety Code, §81.090(m). Amendments at §97.135(a)(4)(B) add language to better reflect the requirements at Health and Safety Code, §81.090(n). Amendments at §97.135(a)(5) better reflect the requirements of Health and Safety Code, §81.090(m)(2), by adding the term "AIDS," and by deleting rule text referring to the content of counseling and instead inserting a cross-reference to the requirements in Health and Safety Code, §81.109.

Amendments to §97.136(a) revise text for ease of readability. Amendments to §97.136(c) update the agency name. Amendment at §97.136(d) inserts a cross-reference to additional requirements for midwives found at Health and Safety Code, §81.091.

Amendments to §97.137(a) revise text for readability and clarity. Amendments to §97.137(c) delete the first sentence since the idea is more fully expressed in the federal guidance documents already referenced in the rule. Amendments to §97.137(c) also clarify what federal documents are being cross-referenced. Amendments to §97.137(d) update legacy agency references. Amendment at §97.137(e) cross-references the requirements and information found at Health and Safety Code, §§85.201 - 85.203, as well as cross-reference a department rule regarding the Exposure Control Plan in §96.202 of this title.

Amendments to §97.138 restructure the rule section to better reflect the requirements, and limitations, of the Code of Criminal Procedure, Article 21.31, as well as improve clarity and readability. The four-year review of this rule section found language that could be read to exceed the authority given the department under the statute (e.g. language binding court action). The amendment brings the rule more squarely in line with the statutory authority. Amendments to §97.138(a) provide updated statutory cross-references, and more exactly reflect the Article 21.31 discretion given the judge in the procedures described. These amendments would also use cross-references to fully capture the various specific criminal offenses at issue, more thoroughly describe the applicable diseases, and improve clarity and readability. Amendments to §97.138(b) cover the actual testing, provide a reference to agency guidance documents as required by the statute (see http://www.cdc.gov/std/treatment), and provide a cross-reference regarding requirements applicable to hospitals in the statute. Amendments to §97.138(c) reflect statutory language regarding obligations of the person performing the test and of the local health authority. Section 97.138(d) through (g) are deleted as part of the reorganization of this rule section, and to make sure that the rules do not exceed the authority granted to the department under Article 21.31 of the statute. Article 21.31, along with various Health and Safety Code provisions, contain adequate detail regarding how and when testing should occur (in conjunction with the department testing guidance that is referenced in §97.138(b) - see web site above).

Amendments to §97.140(a) and (b)(1) update the program and agency names. Amendments to §97.140(b)(2) clarify the intent of the rule as to the duties performed and the medical test referenced in Health and Safety Code, §85.116(f). Amendments to §97.140(b)(3) improve readability and explicitly reflect the language at Health and Safety Code, §85.116(a). Amendments at §97.140(b)(3)(A) match changes for §97.140(b)(2) and also provide clarity and improved readability.

Amendments to §97.141 revise the section title to fully reflect the contents of the rule. Amendments at §97.141(a) improve readability, update the agency name, and update the statutory cross-reference. Amendments at §97.141(b) revise the text to better describe contents of the course, and delete unnecessary and incomplete language. Amendments at §97.141(c)(1) revise text to more accurately describe those for whom no fee is charged under Health and Safety Code, §85.087(c), and outline circumstances when the fee may be waived under agency policy. Amendments at §97.141(c)(2) update the agency name. Amendments at §97.141(d) update the method that is used for training notices.

Amendments to §97.142 concern the HIV/AIDS Education of school age children and the Health and Safety Code, §§85.004 - 85.007, §163.001 and §163.002 do not require rules on this subject matter. The department complies with all these statutory provisions, such that the logical content for this rule is to direct interested persons to the place where they can obtain the agency documents in question.

Amendments to §97.143(a) update the agency name. Amendments at §97.143(b) also update the legacy agency references and delete a redundant statement. A new §97.143(c) is added in order to address the requirements in Health and Safety Code, §85.012(e).

Amendments to §97.144 revise the title of the rule to better reflect the language in the Health and Safety Code, §85.141. Amendments to §97.144(a) and (b) update legacy agency references.

Amendments to §97.145(a) revise text for better readability. Amendments to §97.145(b) update the agency name.

Amendments to §97.146 revise text to improve readability and to more explicitly reflect to the full coverage of this rule subchapter.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapters 81 and 85; by Code of Criminal Procedure, Article 21.31; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 421. HEALTH CARE INFORMATION

SUBCHAPTER D. COLLECTION AND RELEASE OF OUTPATIENT SURGICAL AND RADIOLOGICAL PROCEDURES AT

HOSPITALS AND AMBULATORY SURGICAL CENTERS

25 TAC §§421.61 - 421.68

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§421.61 - 421.67, and new §421.68, concerning the collection and release of patient level data relating to patients that have surgical procedures or radiological procedures (under specified revenue codes) performed in Texas hospitals (as an outpatient service including in the emergency department) or ambulatory surgical centers. The amendments to §§421.61 - 421.67 and new §421.68 are adopted with changes to the proposed text as published in the June 13, 2008, issue of the *Texas Register* (33 TexReg 4599).

BACKGROUND AND PURPOSE

The previous §§421.61 - 421.67 related to the collection and release of ambulatory surgical care and emergency department data on reporting hospitals. The sections were previously adopted as a voluntary submission process to the department. The department did not collect any data from hospital outpatient services or emergency department services because grant funds were requested, but not awarded to the department for this data collection. The rules were originally developed and adopted by the council and were transferred to the department on September 1, 2004, as a result of the consolidation of health and human services agencies under House Bill 2292 (HB 2292), 78th Texas Legislature, 2003.

The amendments and new section are necessary to comply with Health and Safety Code, Chapter 108 including the sections added by Sections 2 and 3, Senate Bill (SB) 1731, 80th Texas Legislature, 2007, which authorizes and directs the department to prioritize the collection of data relating to patients that have surgical or radiological procedures performed in Texas hospitals or ambulatory surgical centers. The 80th Texas Legislature provided funding under House Bill 1 for Senate Bill 1731. House Bill 2292, 78th Texas Legislature, 2003, consolidated the Texas Health Care Information Council (council) into the department, which assumes the requirements of Health and Safety Code, Chapter 108.

Health and Safety Code, Chapter 108, requires the Executive Commissioner to adopt rules to implement the collection and release of data from health care facilities. Section 2 added "free-standing imaging center" to the list of facilities included under the term "Health Care Facility" in Health and Safety Code, §108.002(10), thereby authorizing the department to collect data from free-standing imaging centers which are neither defined nor licensed by the state. Section 3 amended Health and Safety Code, §108.009(k), and established the prioritization of data collection efforts for the department as "inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing radiology centers." The adopted amendments and new section do not address or include language requiring the collection of data from free-standing imaging centers, but do require submission of select revenue codes that include surgical and radiological procedures from hospitals and ambulatory surgical centers. The adopted amendments to §§421.61 - 421.67 establish rules regarding the submission, correction, certification requirements and the new §421.68 provides rules regarding the release specifications of select revenue codes which cover surgical procedures or radiological procedures occurring in hospitals or ambulatory surgical centers.

The department currently collects and reports on hospital discharge data, which establishes the basic infrastructure for the statewide health care data collection system. The department is charged by Health and Safety Code, §108.006(a) "to facilitate the promotion and accessibility of cost-effective, good quality health care." The department will modify and test the changes that will be made to the current infrastructure to ensure that the processes and procedures are practical and comply with the statute and rules. The collection and release of patient level data relating to surgical or radiological procedures from hospitals and ambulatory surgical centers will be used by staff to create quality of care reports and the public use data files can be purchased by consumers to analyze the data for their own purposes. For example, the data will provide more objective information regarding the access to health care and identify gaps in the health care systems. The data could provide improvements in ambulatory surgical care provided in hospitals and ambulatory surgical centers and the transfer processes within and between hospitals and ambulatory surgical centers. The data allows consumers, employers and health insurance plans to make better-informed choices relating to health care provided by hospitals and ambulatory surgical centers. The data also provides information on the incidence and prevalence rates of certain diagnoses and procedures that occur in or are performed in outpatient settings in hospitals and ambulatory surgical centers. From a public health perspective the data can help identify high incidence geographic areas or at risk populations meriting public action and can help identify those hospitals or ambulatory surgical centers delivering the best results so that other facilities can be encouraged to adopt "best practices."

The department has designed the process for data collection to meet the explicit requirements of, Heath and Safety Code, Chapter 108, to obtain data that is as complete and accurate as possible. In designing the process the department has consulted with the Texas Hospital Association, Inc. (THA), Dallas-Fort Worth Hospital Council, Inc. (DFWHC), Texas Ambulatory Surgery Center Society (TASCS), Austin Radiological Association (ARA) and National Association of Health Data Organizations (NAHDO). Department staff has studied the approaches and experiences of other state health data systems and received input from the States of New York, California, Maine, Virginia and Florida.

Health and Safety Code, §108.009(h), requires the department to accept data in data submission formats used by hospitals and other providers and to use the format developed by the National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA-1500 (Health Care Financing Administration Form 1500) or their successors or other universally accepted standardized forms. The UB 04 is the successor to the UB 92 and the CMS-1500 (Centers for Medicare and Medicaid Services Form 1500) is the successor to the HCFA-1500. These are paper forms of the patient claims, CMS has discouraged the use and submission of paper based claims. The federal government, CMS and the State of Texas have encouraged the submission of electronic data, including Medicare claims as a result of the regulations and amendments to the Paperwork Reduction Act, Printing Act, and the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Public Law 103 - 40), which have extended the definition of government publications beyond paper formats. The adopted amendments require hospitals and ambulatory surgical centers to submit

data in HIPAA (Health Insurance Portability and Accountability Act of 1996, Public Law 104 - 191, 104th Congress) compatible formats, which are modified to collect patient race and ethnicity. The current accepted standardized forms are approved through federal transaction and code sets regulations under HIPAA. Those versions are the American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide (ANSI 837 Institutional Guide) and American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Professional Claim Implementation Guide (ANSI 837 Professional Guide). The current approved version of the ANSI 837 Institutional Guide is Version 4, Release 1, Sub-release 0, Transmission Type X096 with Addendum 1 (004010X096A1) and the approved version for the ANSI 837 Professional Guide is 004010X098A1.

Health and Safety Code, §108.009(k), requires the department to collect health care data elements relating to the racial and ethnic background of patients. These data elements are not routinely collected or reported on the standardized claim forms. The current HIPAA compliant 4010A1 versions of ANSI 837 Institutional Guide and ANSI 837 Professional Guide have a data element field listed for Race or Ethnicity Code (DMG05), and it is marked as "Not Used" (for billing) in the manuals printed by the Washington Publishing Company. The ANSI 4010A1 data translators (software that reads and interprets the code) only allow for one character in the field. The department requires for hospital inpatient data submissions under §421.9(c)(1) of this title that the "Race Code" be submitted in this location. The patient ethnicity code is reported in the NTE02 data field for hospital inpatient data under §421.9(c)(2) of this title, which is marked as a "Situational" (submission is required sometimes and dependent upon additional criteria) data field.

In the adopted amendments, the department will collect race and ethnicity by requiring the same codes and locations as required by the current hospital inpatient data submission rules. The department has not received or heard of any reported incidences of claims rejected for facilities submitting to third party payers that included these data elements on the billing claim. The department anticipates modifying the rules regarding the collection of the patient race and ethnicity codes after federal approval of other versions of the ANSI 837 Institutional Guide or ANSI 837 Professional Guide. The next versions will expand the number of characters because the United States Office Management and Budget (OMB) recommended that multiple race codes be allowed and collected for data analysis. The adopted amendments allow for matching to the code set recommended by OMB, except that Hawaiian-Pacific Islanders are included with the Asian race code (2). The latest United States Census information (2006) indicates that Hawaiian-Pacific Islanders are approximately 0.1 percent of the Texas population (http://quickfacts.census.gov/qfd/states/48000.html). The department anticipates expanding the list in the future to include all federally approved codes. Expansion of the list will allow facilities to be more precise in their reporting and will allow the data to be classified into the more basic categories as research requires or allows.

Health and Safety Code, §108.009(i), requires the department to develop reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity. The department knows of no facilities that are without electronic data processing capabilities. One facility reported that they did not have an electronic billing system. Several facilities have expressed concern that they do not have the ability to transfer data over the secured Internet connections or direct connections with the department's contract vendor who receives and processes the data. The department's contract vendor will provide free data entry software that can be utilized by the facilities to create an electronic data submission file that can be encrypted and placed on electronic media, (e.g., CD (Computer Disk), or other department approved portable electronic media), that can be mailed to the contract vendor or transferred via telephone using a computer MODEM (Modulator/demodulator - an electronic device for converting between serial data from a computer and an audio signal suitable for transmission over a telephone line connected to another modem). The definition of "public use data" in Health and Safety Code, Chapter 108, requires that the data be severity and risk adjusted. The department is not aware of any severity and risk adjustment methodology software for outpatient data that assigns risk and severity scores to outpatient data for public data release. The department has investigated three products from 3M™, the "Ambulatory Patient Classification" (APC) software, Ambulatory Patient Group (APG) software and Clinical Risk Group (CRG) software and one product from the Agency for Healthcare Research and Quality (AHRQ) has a Clinical Classifications Software and each provide adjustment information regarding outpatient data that can be useful to the public, policy makers and health data researchers. Therefore, those data elements are included in the list of data elements to be included in the public use data file in new §421.68.

Health and Safety Code, §108.009, requires providers to submit data as required by these sections. The HIPAA privacy regulations at 45 Code of Federal Regulations, §164.512(a), allow health care providers to disclose protected health information without a patient's consent or authorization when disclosure is required by law. Since state law requires disclosure to the department, the HIPAA regulations allow the submission of the data.

Some ambulatory surgical centers also may be licensed under the Health and Safety Code, Chapter 245, Texas Abortion Facility Reporting and Licensing Act. That law requires certain reports to be made to the department and the records held by the department are confidential. The data to be collected under these rules is subject to the Health and Safety Code, Chapter 108; Chapter 245 does not apply to the data.

The data cannot be required to be submitted to the department before the 90th day after the date the rules are adopted and must take effect not later than the first anniversary after the date the rules are adopted.

The adopted rules are effective 90 days after being published in the *Texas Register* as required by Health and Safety Code, §108.009(b). The department will not implement or enforce these rules until July 1, 2009 at the earliest. The actual implementation date will be the beginning of the quarter for the fiscal year for which the department will collect data under this subchapter and facilities will be required to submit the data. The department will notify facilities of progress and the actual implementation date via the department's numbered letter which is posted on the department's website and is sent to each facility's primary contact person.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 421.61- 421.67 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In response to the consolidation of the council into the department, the term "Council" is replaced with the term "DSHS" throughout the sections and the referenced section numbers are updated throughout to reflect the numbers assigned when the rules were transferred to the department in 2004.

Throughout the sections the term "reporting hospital" is replaced with "facility" and "reporting hospitals" replaced with "facilities."

A new subsection is added to each section to state that the section will be effective 90 calendar days after being published in the *Texas Register* and that the department will not implement or enforce the section until July 1, 2009 at the earliest.

Section 421.61, Definitions are amended by adding the following new terms and definitions to clarify new language: "Ambulatory surgical center," "Anesthetized patient," "ANSI 837 Professional Guide," "APG," "CRG," "Other Provider," "Outpatient," and "Rendering provider or rendering other health professional."

The following terms and definitions were deleted because the terms were deleted from this subchapter and are no longer used or necessary: "Attending physician," "Council," "CPT," "Discharge," "DRG," "Executive Director," "Panel," "Referring provider or referring other health professional," "Reporting hospital," "Scientific Review Panel" and "TDH."

The following term descriptions are amended: "Certification file" adds a clarifying statement regarding the contents of the file; "Certification Process" updates the title of the reference section; "Clinical Classifications Software", the term has been updated and adds clarifying language regarding the developer of the software; "Event claim" removes the section title name of the reference section and adds reference to the ANSI 837 Professional Guide; "Event file" removes the section title name of the reference section and adds the phrase "and ANSI 837 Professional Guide" as a reference for the terms usage; "Facility" adds ambulatory surgical centers to hospitals as being required to report under this subchapter; "Facility Type Indicators" adds ambulatory surgical centers to the list of indicators which provide information to the data user regarding the type of health services provided by the facility; "Geographic identifiers" changes the phrase "public health region" to "health service region" in response to departmental terminology for the region; "HCPCS" updates changes in abbreviation definitions at the United States Department of Health and Human Services and adds a clarifying statement that "Current Procedural Terminology" (CPT) codes which are maintained by the American Medical Association (AMA) are "Level 1" HCPCS codes; "Hospital" updates the referenced section; "IRB" adds clarifying language regarding the composition of the IRB and their role regarding release of outpatient event data; "Operating or Other Physician" updates agency name, deletes the phrase "performed the principal procedure or" and adds the phrase "or radiological" between "surgical" and "procedure"; "Other Provider" adds the phrase "as reported on a claim," replaces "a secondary" instead of "the principal" and adds the phrase "a primary or secondary" between "surgical or" and "radiological procedure"; in "Physician" the Latin phrase "et seq." is added to the legal citation; "Public use data file" adds the phrase "For the purposes of this subchapter" to the description and removes the reference to ambulatory surgical care and emergency department, because the subchapter addresses the types of data in the file; "Required minimum data set" adds clarifying language about the ANSI 837 Institutional Guide and ANSI 837 Professional Guide, updates the referenced sections and removes language that is no longer necessary; "Research data file" updates language to the current policy regarding research data release; "Submission" updates referenced rule section and removes the title name in accordance with administrative format guidelines; in "THCIC Identification Number" a clarifying statement is added regarding the assignment of the distinguishable identifier for multiple location facilities under one license number; and, "Uniform physician identifier" removes the word "referring" and adds clarifying language regarding the assignment of a uniform physician identifier for this title.

Section 421.62 is amended to include hospital outpatient and ambulatory surgical center data. Hospitals and ambulatory surgical centers will be required to report data to the department. The data to be reported will be determined by what surgical procedures or radiological services are covered by the revenue codes specified in §421.67(f) and were received by a patient of the facility. Also, the sectioned names in the referenced rules are revised to reflect the correct rule information and administrative format guidelines.

Section 421.63(a) is amended to use defined terms regarding outpatient data submission. Section 421.63(b) is amended to clarify that a delay in the due date requirements is allowed upon a timely written request until the department renders a decision regarding the delay request.

Section 421.64 is amended to revise the section name of the referenced section in accordance with administrative format guidelines and clarify that submission deadline dates specified in the section are based on calendar days. An alternative data submission method is added for submitting the required minimum data set on events required by this chapter. This alternative method requires that the facilities and the media be approved by the department prior to submission of the data file.

Section 421.65 is amended to revise section titles and referenced rules in accordance with administrative format guidelines. In §421.65(b)(2) the term "event" is added to the second sentence, and in §421.65(b)(4) the word "statement" replaced "discharge" to be consistent with the text in this subchapter.

In §421.66(b) the word "indicating" is added to the first sentence for clarification. Section 421.66(c)(3) is amended to state which outpatient data is being certified by the facility and rule references were revised. In §421.66(c)(4), the word "who" replaces "and" to clarify the second sentence.

Section 421.67(a) is amended to specify that data could be submitted in either the modified ANSI 837 Institutional Guide format or the ANSI 837 Professional Guide format. The department intends to follow as closely as possible the HIPAA transaction and code set guidelines as allowable in order to fulfill the mandate in Health and Safety Code, Chapter 108, to use accepted standardized formats.

Section 421.67(c) is amended to include the ANSI 837 Professional Guide as a valid data format for submitting the required data elements to DSHS and clarify that the format may change in response to changes in state law or federal legislative or federal regulation requirements. A clarifying statement is added in §421.67(c)(3) for the submission of External Cause of Injury codes (E-codes) in the ANSI 837 Professional Guide. In §421.67(c)(4)(C) clarifying language is added to reference the corresponding Loops in the ANSI 837 Institutional Guide and the ANSI 837 Professional Guide for the "Service Facility Provider" identification number.

Section 421.67(d) is amended to state the required minimum data set for facilities that provide one or more of the services that are included under the revenue codes specified in §421.67(f) of this title for patients which are uninsured, considered as self pay, or are covered by a third-party payer which requires the facility to submit a claim in an ANSI 837 Institutional Guide format or CMS-1450 format. Language that is no longer applicable in regards to HIPAA implementation deadlines is deleted. In §421.67(d)(13) a clarifying statement is made regarding "Type of Bill." In §421.67(d) the following data elements: (19) Principal Procedure Code; (20) Principal Procedure Date; (21) Other Procedure Codes; and (22) Other Procedure Dates are deleted. In §421.67(d) the phrase "(if applicable)" is added to the following data elements: "Other Provider or Other Health Professional Name," "Other Provider or Other Health Professional Primary Identifier," "Other Provider or Other Health Professional Secondary Identifier," "Operating Physician or Other Health Professional Name," "Operating Physician or Other Health Professional Primary Identifier," and "Operating Physician or Other Health Professional Secondary Identifier." In renumbered §421.67(d)(32)(C) - (F), regarding HCPCS Procedure Modifiers (1) - (4), a clarifying statement has been added regarding the HCPCS Procedure Modifiers. Proposed data elements in §421.67(d)(41) - (43) that addressed "Referring Provider or Referring Other Health Professional" are removed from the list of data elements in adoption.

Section 421.67(e) specifies the required minimum data set for facilities that provide one or more of the services that are included under the revenue codes specified in §421.67(f) of this title for patients for whom the third-party payer requires the claim to be submitted in the ANSI 837 Professional Guide format or the CMS-1500 format. Language is added to provide a facility the option of submitting to the department the required minimum data set specified in §421.67(d) instead of the modified ANSI 837 Professional Guide format. In §421.67(e) the following data elements: (18) Principal Procedure Code; and (19) Principal Procedure Date are deleted. In renumbered §421.67(e)(18)(A) - (D) a clarifying statement has been added regarding the HCPCS Procedure Modifiers. Proposed data elements in §421.67(e)(21) - (23) that addressed "Referring Provider or Referring Other Health Professional" are removed from the list of data elements in adoption.

Section 421.67(f) is added to specify revenue codes, which cover surgical and radiological procedures of outpatients whose data shall be submitted to the department in compliance with this subchapter. Proposed language that addressed "Referring Provider or Referring Other Health Professional" is removed from the section.

New §421.68 establishes rules regarding the protection of patient and physician identifying data and release of event data collected under this subchapter as mandated by Health and Safety Code, Chapter 108. Proposed language that addressed "Referring Provider or Referring Other Health Professional" is removed from the section. In §421.68(g)(5) the word "referring" is deleted. In §421.68(g)(10)(P) the data element "Principal Procedure code" is deleted. In §421.68(g)(10) the data element name "Procedure codes" replaces "Other Procedure codes." In §421.68(g)(10) the data element "Uniform Physician Identifier assigned to the Referring Provider or Referring Other Health Professional." In §421.68(i) the word "An" replaces "A" at the beginning of the sentence.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Texas Hospital Association, (THA), Dallas-Fort Worth Hospital Council (DFWHC), Texas Chapter of American College of Cardiology (TCACC), Texas Medical Association in conjunction with Texas Neurology Society and TCACC and the Texas Ambulatory Surgery Center Society (TASCS). The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: One commenter recommended that the proposed rules not be adopted and further study be performed in consideration of the costs to ambulatory surgical centers and the healthcare system and that the rules then be revised to minimize the costs.

Response: The commission disagrees with the commenter that the rules should not be adopted, further study of the costs to ambulatory surgical centers and healthcare system be performed and the rules should be revised to reduce the costs. The commission understands the costs to ambulatory surgical centers and hospitals under the rules. Based on the mandates to the department regarding data collection and reporting in Health and Safety Code, Chapter 108, the rules meet the statutory requirements and minimize the costs to the providers. The commission reviews the rules periodically for relevance and if cost reductions to providers can be made, then amendments will be proposed. No change was made as a result of this comment.

Comment: Concerning the required submission dates in §421.63(a)(1) - (4) which were existing and not proposed for amendment, two commenters recommended the department consider allowing hospitals with ambulatory submissions an additional 15 days to clean and validate the inpatient and ambulatory data.

Response: The commission and department disagree and believe that providing two separate timelines that are 15 days apart will create confusion for the data submission personnel and in the confusion more providers/submitters may not meet the specific earlier deadlines for inpatient and will drift to the later date for all their data submissions. This change would require additional amendments to the rules to adjust the timelines for other process deadline further confusing the data submission personnel. In review of the current contract with the state's current contract vendor there would be additional costs to the state. No change was made as a result of this comment.

Comment: Concerning the current submission of "Statement Date(s)" in §421.67(d)(14) which was not proposed to be amended, two commenters asked for clarification regarding what dates are expected to be required for the modified ANSI 837 Institutional Guide (837I) format and why the department removed the "Admit/Start of Care Date". The "Statement Date(s)" is required on ANSI 837 Institutional claims and the Admission/Start of Care segment is situational and only required for inpatient claims, therefore not applicable to the outpatient claims.

Both commenters stated that there are issues with the "Statement Date(s)" because sometimes the through date reflects the last date a charge was posted and asked if the department intends to use the "Statement From Date" as the date of service.

Response: For clarification, the department will use the "Statement From Date" as the service date since the "Service Line Date" was not included as one of the required data elements in the proposed rules. The Service Line Date is a required data element for the ANSI 837 Institutional Guide and is marked accordingly in the technical specifications manual. Most outpatient claims are performed in one day and generally most providers do not bill prior to when a procedure or an examination is performed on a patient, therefore using the statement from date is a good measure for the service date. Variations between the "Statement From Date" and the "Service Line Date" would be minimal regarding analysis of the outpatient data presented in the public use data file. No change was made as a result of this comment.

Comment: Concerning the current submission of "Statement Date(s)" in §421.67(d)(14) which was not proposed to be amended, two commenters asked "What date does the state want in the statement dates?"

Response: The commission anticipates that when a "D8" (Eight digit date code, specified in the ANSI 837 Institutional Guide and the ANSI 837 Professional Guide) qualifier is used and a "Statement Date" submitted that it represents the date patient services were rendered, when a "RD8" (Date Range, using eight digit dates as specified in the ANSI 837 Institutional Guide and the ANSI 837 Professional Guide) qualifier is used for multiple dates the state expects and anticipates that the "Statement From Date" will represent the first day that services were rendered for this event. "Statement Thru Date" is required when a "RD8" qualifier is submitted, but the date is not relevant for data tracking purposes on outpatient claims because "Service Line Date(s)" capture dates of services for outpatient procedures. No change was made as a result of this comment.

Comment: Concerning proposed §421.67(d)(28) relating to the requirement to submit "Related Cause Codes", two commenters asked for clarification on the 3 occurrences of the "Related Cause Codes" (if it is per "External Cause of Injury Code" (E-code) or per record).

Response: The commission agrees and interprets the ANSI 837 Institutional and Professional Guides in regards to the "Related Cause Codes" (Code identifying an accompanying cause of an illness, injury or an accident) as being limited to 3 occurrences per record, because the guides state that they are related to illness, injury or accident. The department believes that not all illnesses from employment or from accidents can be coded in or by the E-code set and there are no direct indicators to the E-codes if listed.

Both ANSI 837 Institutional and Professional Guides allow for up to 100 Claim Information segments per patient record, but the department believes that 3-non-repeating "Related Causes Codes" per patient record would provide adequate information regarding the outpatient event. The ANSI 837 Institutional Guide recommends that the provider use the "Occurrence Codes" instead of the "Related Cause Codes" for Institutional Guide claims. The closest ANSI 837 Professional Guide data element equivalent to the "Occurrence Code" is the "Related Cause Code" and there is also a "Related Cause Code" for the ANSI 837 Institutional Guide, so in order to create as much equivalency between the two data sets, "Related Cause Code" is included in the rules. No change was made as a result of this comment.

Comment: Concerning proposed §421.67(d)(36)(C) - (F) and (e)(20)(A) - (D) relating to the Healthcare Common Procedure Coding System (HCPCS) Modifier Codes, two commenters requested clarification regarding whether the four (4) Procedure Modifiers were applicable for each submitted HCPCS Procedure code or for the combined set of procedure codes.

Response: For clarification, the department interprets the ANSI 837 Institutional Guide and ANSI 837 Professional Guide to allow up to 4 HCPCS Procedure Modifier codes to be submitted for each submitted HCPCS Procedure Code. Language has been added in renumbered §421.67(d)(32)(C) - (F) and (e)(18)(A) - (D) to help clarify the commenters' concerns. No change was made as a result of this comment.

Comment: Concerning §421.67(f)(26) - (28) relating to the requirement of cardiology revenue codes, one commenter stated that the inclusion of cardiology procedures in the proposed rules was beyond the scope of the stated language in SB 1731 and requested that the cardiology codes be removed from the rules before final adoption.

Response: The commission disagrees with the commenter. Section 3 of SB 1731 authorized the department to prioritize data collection efforts on inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing radiology centers. The department interprets this to include cardiology surgical and radiological procedures that would be covered by the cardiology revenue codes in the proposed text. The department originally presented a list of procedure codes to a stakeholder workgroup and they recommended the department use revenue codes instead of procedure codes, since revenue codes would change less often than the procedure codes and would require fewer amendments to the rules. No change was made as a result of this comment.

Comment: Concerning proposed §421.61(44) and (51), §421.67(d)(41) - (43) and (e)(21) - (23), and §421.68(g)(5) and (g)(10)(MM) relating to Referring Provider or Referring Health Professional, two commenters stated that the facilities would have challenges in obtaining the Referring Provider information if those providers were not on staff. The commenters recommended that the department provide for the allowance of a default if the information could not be obtained easily.

Response: The commission agrees that collection of "Referring Provider" will be difficult for those referring providers that are not in the facility and allowing the facilities to submit a default value for those providers not in their system would render the data field virtually useless. The department has deleted the references to "Referring Provider or Referring Health Professional" from the rules to be adopted. Renumbering has occurred where necessary.

Comment: Concerning proposed §421.61(44) and (51), §421.67(d)(41) - (43) and (e)(21) - (23), and §421.68(g)(5) and (g)(10)(MM) relating to Referring Provider or Referring Health Professional, four commenters recommended that all references to "Referring Physician" be eliminated from the rules, stating that the proposed rules go beyond the intent of statutory language in SB 1731. The commenters stated that "Referring Physician" is not included in the statutory language of SB 1731 and the proposed rules went beyond the statutory authority by including them. Three of the four commenters stated that the primary intent of SB 1731 was to introduce transparency in pricing and charge information and collecting "Referring Physician" information does not achieve the goal of the bill. The

commenters also stated that the information collected is to "aid consumers (our patients)" to decide if, when and where to have a health care service performed based on their out of pocket hospital and health plan cost.

Response: The commission agrees and the department interprets SB 1731 is to provide transparency to the health care system regarding charges, costs, quality of care and to provide consumers (including patients, policy makers, employers and researchers) information to make informed decisions regarding health care system charges/costs, quality of care provided by the health care system and the availability of services. Collection and reporting of "Referring Provider" practice is relevant to the costs to the health care system and potentially to the quality of care that patients receive. The proposal to collect "Referring Provider" or Referring Health Professional" was based on the legal authority in the Health and Safety Code, §108.006(a) and §108.009, not based on amendments in Senate Bill 1731. The department agrees that collection of "Referring Provider" will be difficult for those referring providers that are not in the facility and allowing the facilities to submit a default value for those providers not in their system would render the data field virtually useless. The department has deleted the references to "Referring Provider or Referring Health Professional" from the rules to be adopted. Renumbering has occurred where necessary.

Comment: Concerning proposed §421.61(44) and (51), §421.67(d)(41) - (43) and (e)(21) - (23), and §421.68(g)(5) and (g)(10)(MM) relating to Referring Provider or Referring Health Professional, one of the commenters stated that SB 1101, 80th Texas Legislature, 2007 as filed, directed the State to collect information regarding "radiological procedures" and "referring physicians" and that the 2007 Legislature voted against the collecting and reporting of this information citing an unnecessary burden and cost to the health care system and irrelevance to the patient/consumer.

Response: The commission disagrees because SB 1101 proposed a law relating to reporting and disclosure of health care provider referral. It did not propose to amend the statutory authority for these rules, which is Health and Safety Code, Chapter 108. Senate Bill 1101 has no relevance to these rules. No change was made as a result of this comment.

On August 20, 2008, the department met with stakeholders, (including representatives from THA, TMA, DFWHC, TASCS, the Texas Health and Human Service Commission, East Texas Medical Center (ETMC), Siemens, Hospital Corporation of America (HCA) and Hillco Partners representing some hospitals and ambulatory surgical centers, regarding the rules.

Comment: The group made recommendations and discussed definitions and the list of required data elements in regards to the implementation of the rules.

Response: The commission agrees and amended the following sections to reflect standard billing practices.

In §421.61(37), the proposed definition, "Other Provider", is amended and the requirement is amended in renumbered §421.67(d)(25) - (27) to reflect the current billing or data submission practices.

In §421.67(d)(28) - (30), the requirement for "Operating Physician or Other Health Professional" is amended to reflect the current billing or data submission practices.

The proposed §421.67(d)(19) - (22), "Principal Procedure Code", "Principal Procedure Date", "Other Procedure Codes" and "Other Procedure Dates" are deleted, since outpatient procedure codes listed in renumbered §421.67(d)(32)(B) are reported under the revenue codes in the ANSI 837 Institutional Guide.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments and new rule are adopted under the Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect and disseminate data reflecting provider quality, to specify data elements to be required for submission to the department and which data elements are to be released in an outpatient event public use data file; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§421.61. Definitions.

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

(1) Accurate and Consistent Data--Data that has been edited by DSHS and subjected to provider validation and certification.

(2) Ambulatory Surgical Care Data--Data for events associated with facility services, which require surgery to be performed in an operating room on an anesthetized patient.

(3) Ambulatory surgical center--An establishment licensed as an ambulatory surgical center under the Health and Safety Code, Chapter 243.

(4) Anesthetized patient--For the purposes of this subchapter, an outpatient who receives an anesthetic (a substance that reduces sensitivity, feeling, or awareness to pain or bodily sensations or renders the patient unconscious) prior to surgical services from a hospital or ambulatory surgical center.

(5) ANSI 837 Institutional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Institutional Claim Implementation Guide.

(6) ANSI 837 Professional Guide--American National Standards Institute, Accredited Standards Committee X12N, 837 Health Care Professional Claim Implementation Guide.

(7) APC--Ambulatory Payment Classification.

(8) APG--Ambulatory Patient Group (APG)--A prospective payment system (PPS) for hospital-based outpatient care developed by 3M™. APGs provide information regarding the kinds and amounts of resources utilized in an outpatient visit and classify patients with similar clinical characteristics.

(9) Audit--An electronic standardized process developed and implemented by DSHS to identify potential errors and mistakes in file structure format or data element content by reviewing data fields

for the presence or absence of data and the accuracy and appropriateness of data.

(10) Certification File--One or more electronic files (may include reports concerning the data and its compilation process) compiled by DSHS that contain one record for each patient event which has at least one procedure covered in the revenue codes specified in §421.67(f) of this title (relating to Event Files--Records, Data Fields and Codes) submitted for each facility under this subchapter during the reporting quarter and may contain one record for any patient event occurring during one prior reporting quarter for whom additional event claims have been received.

(11) Certification Process--The process by which a provider confirms the accuracy and completeness of the certification file required to produce the public use data file as specified in §421.66 of this title (relating to Certification of Compiled Event Data).

(12) Charge--The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

(13) Clinical Classifications Software--A classification system that groups diagnoses and procedures into a limited number of clinically meaningful categories developed at the United States Department of Health and Human Services, Agency for Healthcare Research and Quality (AHRQ).

(14) CRG--Clinical Risk Grouping software which classifies individuals into mutually exclusive categories and, using claims data, assigns the patient to a severity level if they have a chronic health condition. Developed by 3M™ Corporation.

(15) Comments--The notes or explanations submitted by the facilities, physicians or other health professionals concerning the provider quality reports or the encounter data for public use as described in the Texas Health and Safety Code, §108.010(c) and (e) and §108.011(g) respectively.

(16) Data format--The sequence or location of data elements in an electronic record according to prescribed specifications.

(17) DSHS--Department of State Health Services, the successor state agency to the Texas Health Care Information Council and the Texas Department of Health.

(18) EDI--Electronic Data Interchange--A method of sending data electronically from one computer to another. EDI helps providers and payers maintain a flow of vital information by enabling the transmission of claims and managed care transactions.

(19) Electronic Filing--The submission of computer records in machine readable form by modem transfer from one computer to another (EDI) or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to DSHS.

(20) Emergency Department--Department or room within a hospital as determined by federal or state law for the provision of emergency health care.

(21) Emergency Department Data--Events associated with hospital services in an emergency department or emergency room.

(22) Error--Data submitted on a event file which are not consistent with the format and data standards contained in this subchapter or with auditing criteria established by DSHS.

(23) Ethnicity--The status of patients relative to Hispanic background. Facilities shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(24) Event--The medical screening examination, triage, observation, diagnosis or treatment of a patient within the authority of a facility.

(25) Event claim--A set of computer records as specified in §421.67 of this title relating to a specific patient. "Event claim" corresponds to the ANSI 837 Institutional Guide and ANSI 837 Professional Guide term, "Transaction set."

(26) Event file--A computer file as defined in §421.67 of this title periodically submitted on or on behalf of a facility in compliance with the provisions of this subchapter. "Event File" corresponds to the ANSI 837 Institutional Guide and ANSI 837 Professional Guide terms, "Communication Envelope" or "Interchange Envelope."

(27) Facility--For the purposes of this subchapter a facility is a hospital or ambulatory surgical center, required to report under the Health and Safety Code, Chapter 108 and this subchapter.

(28) Facility Type Indicators--An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that hospital (e.g., Hospital based ambulatory surgical unit and hospitals with an emergency department or emergency room) and ambulatory surgical centers. A facility may have more than one indicator.

(29) Geographic identifiers--A set of codes indicating the health service region and county in which the patient resides.

(30) HCPCS--Healthcare Common Procedure Coding System of the Centers for Medicare and Medicaid Services. This includes the "Current Procedural Terminology" (CPT) codes (maintained by the "American Medical Association" (AMA)), which are "Level 1" HCPCS codes.

(31) HIPPS--Health Insurance Prospective Payment System.

(32) Hospital--A public, for-profit, or nonprofit institution licensed as a general or special hospital (25 TAC §133.2(21)) of this title, or a hospital owned by the state.

(33) ICD--International Classification of Disease.

(34) IRB--Institutional Review Board composed of DSHS' appointees or agents who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the outpatient event public use data.

(35) Operating or Other Physician--The "physician" licensed by the Texas Medical Board or "other health professional" licensed by the State of Texas who performed the surgical or radiological procedure most closely related to the principal diagnosis.

(36) Other health professional--A person licensed to provide health care services other than a physician. An individual other than a physician who provides diagnostic or therapeutic procedures to patients. The term encompasses persons licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists, nurse practitioners, nurse midwives, and podiatrists who are authorized by the facilities to examine, observe or treat patients.

(37) Other Provider--For the purposes of reporting on the modified ANSI 837 Institutional Guide, the physician, other health professional or facility as reported on a claim, who performed a secondary surgical or a primary or secondary radiological procedure on the patient

for the event if they are not reported as the operating or other physician or the facility. In the case where a substitute provider (locum tenens) is used, that physician or other health professional shall be submitted as specified in this subchapter.

(38) Outpatient or patient--For the purposes of this subchapter a patient who receives surgical or radiological services from an ambulatory surgical center or a patient who receives surgical or radiological services from a hospital and is not admitted to a hospital for inpatient services. Outpatients include patients who receive one or more services covered by the revenue codes that are specified in §421.67(f) of this title, which may occur in the emergency department, ambulatory care, radiological, imaging or other types of hospital units. Outpatient includes a patient who is transferred from an ambulatory surgical center to another facility or a hospital patient who is under observation and not admitted to the hospital.

(39) Patient account number--A number assigned to each patient by the facility, which appears on each computer record in a patient event claim. This number is not consistent for a given patient from one facility to the next, or from one admission to the next in the same facility. DSHS will delete or encrypt this number to protect patient confidentiality prior to release of data.

(40) Physician--An individual licensed under the laws of this state to practice medicine under the Medical Practice Act, Occupations Code, Chapter 151 et seq.

(41) Provider--For the purposes of this subchapter, a physician or facility.

(42) Public use data file--For the purposes of this subchapter, a data file composed of event claims which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of data imposed by statute.

(43) Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Facilities shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(44) Rendering provider or rendering other health professional--For the purposes of reporting on the modified ANSI 837 Professional Guide, the physician or other health professional who performed the surgical or radiological procedure on the patient for the event. In the case where a substitute provider (locum tenans) is used, that physician or other health professional shall be submitted as specified in this subchapter. For purposes of this definition, the term "provider" is not limited to only a physician, or facility as defined in paragraphs (27), (37) and (41) of this subsection.

(45) Required minimum data set--The list of data elements for which facilities may submit an event claim for each patient event occurring in the facility. The required minimum data sets are specified in §421.67(d) and (e) of this title. This list does not include all the data elements that are required by the modified ANSI 837 Institutional Guide or modified ANSI 837 Professional Guide to submit an acceptable event file. For example: Interchange Control Headers and Trailers, Functional Group Headers and Trailers, Transaction Set Headers and Trailers and Qualifying Codes (which identify or qualify subsequent data elements).

(46) Research data file--A customized data file, which may include the data elements in the public use file and may include data elements other than the required minimum data set submitted to DSHS, except those data elements that could reasonably identify a patient or physician.

(47) Submission--The transfer of a set of computer records as specified in §421.67 of this title that constitutes the event file for one or more reporting hospitals under this subchapter.

(48) Submitter--The person or organization, which physically prepares an event file for one or more facilities and submits them under this subchapter. A submitter may be a facility or an agent designated by a facility or its owner.

(49) THCIC Identification Number--A string of 6 characters assigned by DSHS to identify facilities for reporting and tracking purposes. For a facility operating multiple facility locations under one license number and duplicating services at those locations, the department will assign a distinguishable identifier for each separate facility location under one license number. The relationship of the identifier to the name and license number of the facility is public information.

(50) Uniform patient identifier--A unique identifier assigned by DSHS to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across facilities and patient events. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(51) Uniform physician identifier--A unique identifier assigned by DSHS to a physician or other health professional who is reported as operating, rendering or other provider providing health care services or treating a patient in a facility and which remains constant across facilities. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(52) Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

(b) This section is effective 90 calendar days after being published in the *Texas Register*. The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.62. Collection of Hospital Outpatient and Ambulatory Surgical Center Data.

(a) Each facility in operation for all or any of the reporting periods described in §421.63 of this title (relating to Schedule for Filing Event Files) shall submit to DSHS event claims as specified in §421.67 of this title (relating to Event Files--Records, Data Fields and Codes) on all patient events in which the patient received one or more of the surgical procedures or radiological services covered by the revenue codes specified in §421.67(f) of this title. All facilities that are exempt under the Health and Safety Code, §108.0025, but choose to participate in reporting under this subchapter, shall comply with the requirements in this subchapter. To the extent the medical screening examination, triage, observation, diagnosis or treatment is made by a health professional, other than a physician, data elements specified in §421.67(d)(25) - (30) or (e)(19) of this title shall be filled accordingly or data elements in §421.67(d)(26) or (29) in the modified ANSI 837 Institutional Guide or §421.67(e)(20) in the modified ANSI 837 Professional Guide shall be marked with one of DSHS approved temporary "Physician" or "Other health professional" code numbers and data elements in §421.67(d)(25)(A) - (C) or (28)(A) - (C) in the ANSI 837 Institutional Guide format or §421.67(e)(19)(A) - (C) in the ANSI 837 Professional Guide format may be left blank.

(b) All patient events in which the patient received one or more of the surgical procedures or radiological services covered by the revenue codes specified in §421.67(f) of this title shall be reported by the

facility that prepares one or more bills for patient services. The facility shall submit an event claim corresponding to each bill containing the data elements required by §421.67 of this title. For all patients who received one or more of the surgical procedures or radiological services covered by the revenue codes specified in §421.67(f) of this title for which the facility does not prepare a bill for patient services, the facility shall submit an event claim containing the required minimum data set.

(c) Each facility shall submit event files by electronic filing unless the facility receives an exemption letter from DSHS.

(d) Each facility shall submit event claims and event files in the format specified in §421.67 of this title.

(e) Each facility shall submit event files, data certifications and other required information to DSHS or its agents at physical or telephonic addresses specified by DSHS. DSHS shall notify all facilities and submitters in writing and by publication in the *Texas Register* at least 30 calendar days before any change in the addresses.

(f) Each facility may submit event files, or may designate an agent to submit the event files. If a facility designates an agent, it shall inform DSHS of the designation in writing at least 30 calendar days prior to the agent's submission of any discharge report. The facility shall inform DSHS in writing at least 30 calendar days prior to changing agents or making the submissions itself.

(g) This section is effective 90 calendar days after being published in the *Texas Register.* The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.63. Schedule for Filing Event Files.

(a) For patient events occurring on or after January 1, 2009, as specified by DSHS, facilities shall file event files according to the following schedule as shown in paragraphs (1) - (4) of this subsection:

(1) Each event claim covering patient events occurring between January 1 and March 31, inclusive, shall be submitted no later than June 1 of the calendar year in which the discharge occurred.

(2) Each event file covering patient events occurring between April 1 and June 30, inclusive, shall be submitted no later than September 1 of the calendar year in which the discharge occurred.

(3) Each event file covering patient events occurring between July 1 and September 30, inclusive, shall be submitted no later than December 1 of the calendar year in which the discharge occurred.

(4) Each event file covering patient events occurring between October 1 and December 31, inclusive, shall be submitted no later than March 1 of the year following the year in which the discharge occurred.

(b) Extensions to processing due dates may be granted by DSHS in response to a written request signed by the facility's chief executive officer. Requests must be in writing, must be received at least 5 working days prior to the due date and must be accompanied by adequate justification for the delay. A timely written request shall constitute a stay (delay) of the due date until a decision is issued by DSHS.

(c) This section is effective 90 calendar days after being published in the *Texas Register.* The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.64. Instructions for Filing Event Files.

(a) Electronic Data Interchange. Event files may be filed electronically using electronic data interchange (EDI). All event files and event claims shall be reported using the same file and record formats specified in §421.67 of this title (relating to Event Files--Records, Data Fields and Codes) regardless of the medium of transmission. DSHS shall document instructions for filing event files by EDI and shall make this documentation available to facilities at no charge and to the public for the cost of reproduction. DSHS shall notify facilities reporting under this subchapter and their designated agents directly in writing at least 90 calendar days in advance of any change in instructions for filing event files by EDI. DSHS' instructions shall follow Department of Information Resources standards for EDI.

(b) File Transfer Protocol (FTP). Event files may be filed by FTP using a Transmission Control Protocol over Internet Protocol (TCP/IP) Network connection. DSHS shall document instructions for filing event files by FTP and shall make this documentation available to facilities at no charge and to the public for the cost of reproduction or on DSHS' Internet website. DSHS shall notify facilities reporting under this subchapter and their designated agents directly in writing at least 90 calendar days in advance of any change in instructions for filing event files by FTP. DSHS' instructions shall follow Department of Information Resources standards for FTP.

(c) Other Electronic or Magnetic Media. An event report may be filed on other electronic or magnetic media with prior written approval by DSHS. All events shall be reported using the same file and record formats specified in §421.67 of this title regardless of medium. DSHS will not normally approve any medium, which the department or the DSHS contract vendor is not currently equipped to read at the time of the request for approval.

(1) Media specifications are:

(A) computer disk (CD): MS-DOS formatted; PC Text file (ASCII); or

(B) other electronic or magnetic media only with the prior written approval from the department.

(2) Facilities shall submit to DSHS only pre-approved media with the following external identification affixed:

(A) hospital name;

(B) facility identifier;

(C) reporting period for discharges;

(D) number of records by record type; and

(E) the description: "OUTPATIENT DATA."

(3) In addition to the provisions of this section, DSHS shall document instructions for filing discharge reports on electronic or magnetic media and shall make this documentation available to facilities at no charge and to the public for the cost of reproduction. DSHS shall notify facilities or their designated agents directly in writing at least 90 calendar days in advance of any change in instructions for filing event reports on electronic or magnetic media.

(d) This section is effective 90 calendar days after being published in the *Texas Register.* The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.65. Acceptance of Event Files and Correction of Data Content Errors.

(a) Upon receipt of an event file, DSHS shall establish a process to determine if it satisfies minimum criteria for processing. If it does not, DSHS shall establish a process to provide a report to be returned to the submitter regarding the invalid event file in a format and media that is approved for that provider and states the deficiencies. The facility shall submit a corrected event file within 10 calendar days of notification by DSHS or DSHS' agent. An event file does not

meet minimum standards for processing if the file structure does not conform to the specifications in §421.67 of this title (relating to Event Files--Records, Data Fields and Codes).

(b) Correction of Data Content Errors.

(1) DSHS shall establish an audit process for all event files accepted for processing. DSHS shall notify the facility identified from the event file in detail of all errors detected in an event file which was received in an acceptable format as provided in §421.67 of this title.

(2) Within 30 calendar days of receiving initial notice of errors in an event file, the facility shall correct all event claims containing errors, add any event claims determined to be missing from the initial event file and resubmit the corrected and/or previously missing event claims. If the facility disagrees with any identified error, the facility may indicate that the event claim is as accurate as it can be or cannot be corrected. Each facility shall submit such modified and/or additional event claims as may be required to allow the chief executive officer or the chief executive officer's designated agent to certify the quarterly event file as required by §421.66 of this title (relating to Certification of Compiled Event Data). Corrections to an event file shall be submitted on approved media and formats as specified in §421.64 of this title (relating to Instructions for Filing Event Files) and §421.67 of this title unless DSHS approves another medium or format.

(3) Within 10 calendar days of receiving corrections to an event file from a facility, DSHS shall notify the facility of any remaining errors. The facility shall have 10 calendar days from receipt of this notice to correct the errors noted or indicate why the data should be deemed acceptable and complete. This process may be repeated until the data is substantially accurate and the facility is able to certify the event file as required by §421.66 of this title or the deadline for submitting corrections prior to certification is reached. Corrected data is required to be submitted on or before the following dates for the respective quarter's discharges: Quarter 1 - August 1; Quarter 2 - November 1; Quarter 3 - February 1; Quarter 4 - May 1. DSHS may grant an extension to all facilities when deemed necessary.

(4) Event claims that have not been previously submitted shall be submitted prior to the deadline for the following quarter's data. Correction and certification of these previously missing or additional event claims for the prior calendar quarter shall be made according to the deadlines established for following quarter in which the data that is scheduled to be processed as specified in §421.63(a) of this title (relating to the Schedule for Filing Event Files), paragraph (3) of this subsection concerning the acceptance of event files and correction of data content errors), and §421.66(b) and (d) of this title. Corrections to event claims previously submitted or that have a statement date prior to calendar quarter immediately before the calendar quarter being processed scheduled will not be processed.

(c) DSHS will document format acceptance criteria for event files. DSHS shall make this information available to submitters and facilities.

(d) This section is effective 90 calendar days after being published in the *Texas Register*. The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.66. Certification of Compiled Event Data.

(a) Within 5 months after the end of each reporting quarter, DSHS shall establish a process to compile one or more electronic data files for each facility using the event claims received from each facility. The certification file shall have one record for each patient event during the reporting quarter and one record for any patient event occurring during one prior reporting quarter for which additional event claims have been received. The data files, including reports returned to the facilities, allow the facility to provide physicians and other health professionals the opportunity to review, request correction of, and comment on patients for whom an event occurred under the jurisdiction of the facilities and they are indicated as "attending" or "operating or other." DSHS shall determine the format and medium in which the quarterly file will be delivered to facilities.

(b) The chief executive officer or chief executive officer's designated agent of each facility shall mark the appropriate box on the form provided indicating whether the facility is certifying or not certifying the event data and reports in the certification file specified in subsection (a) of this section. The chief executive officer or chief executive officer's designated agent shall sign and return the form to DSHS by fax or mail. A person designated by the chief executive officer and acting as the officer's agent may sign the certification form. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide DSHS with detailed comments regarding the errors or submit a written request (on a form supplied by DSHS) and provide the data, processes and resources necessary to correct any inaccuracy and certify the certification file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification event data shall be submitted on or prior to the following schedule: Quarter 1 - October 15; Quarter 2 - January 15; Quarter 3 - April 15; Quarter 4 - July 15. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach the justification to the certification form. Election to not certify data does not prevent certification file data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that:

(1) policies and procedures are in place within the facility's processes to validate and assure the accuracy of the event data and any corrections submitted; and

(2) all errors and omissions known to the facility have been corrected or the facility has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted accurately represents the facility's administrative status of patients for which the services covered by the revenue codes identified in §421.67(f) of this title (relating to Event File--Records, Data Fields and Codes) were provided for the reporting quarter; and

(4) the facility has provided physicians and other health professionals a reasonable opportunity to review and comment on the event data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §421.67 of this title (for example, "attending physician" or "operating or other physician" as applicable). The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent who shall address any comments by the physicians or other health professionals; or

(5) if the chief executive officer or the officer's designee elects not to certify the event data file for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and completeness of the data at the time of the certification shall be included on the certification form. Event claim data that has been audited, returned to the facility and is not certified, may be released and published in the public use data file and used by DSHS for analysis.

(d) Each facility shall submit its certification form for each quarter's data to DSHS by the first day of the ninth month (Quarter 1 - December 1; Quarter 2 - March 1; Quarter 3 - June 1; Quarter 4 - September 1) following the last day of the reporting quarter as specified in §421.63(a)(1) - (4) of this title (relating to Schedule for Filing Event Files). DSHS may extend the deadline for any or all facilities when deemed necessary.

(e) Facilities, physicians or other health professionals may submit concise written comments regarding any data submitted by the associated facilities or relating to services they have delivered which may be released as public use data. Comments shall be submitted to DSHS on or before the dates specified in subsection (d) of this section, regarding the submission of the certification form. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §421.64(a) and (b) of this title (relating to Instructions for Filing Event Files).

(f) Failure to submit a signed certification form that is supplied by DSHS on or before the dates specified in subsection (d) of this section corresponding to event data previously submitted shall be considered as not certified.

(g) This section is effective 90 calendar days after being published in the *Texas Register.* The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.67. Event Files--Records, Data Fields and Codes.

(a) Facilities shall submit event files, electronically in the file format for outpatient bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI ASC X12N form 837 Health Care Claims transaction for institutional claims or ANSI ASC X12N form 837 Health Care Claims transaction for professional claims. ANSI updates these formats from time to time by issuing new versions and the United States Department of Health and Human Services adopts regulations regarding HIPAA that update the version allowed for claim submissions.

(b) DSHS will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the ANSI 837 Institutional Guide and the ANSI 837 Professional Guide, DSHS has specified the location where each of the following data elements in this subsection shall be reported in the ANSI 837 Institutional Guide format and the ANSI 837 Professional Guide format. Data element content, format and locations may change as state legislative requirements, or federal legislative or regulation requirements change (i.e., HIPAA).

(1) Patient race - This data element shall be reported at Loop 2010BA or 2010CA in the segment DMG05 as a numeric value. Acceptable codes are 1 = American Indian/Eskimo/Aleut, 2 = Asian or, Pacific Islander, 3 = Black, 4 = White and 5 = Other Race. In order to obtain this data, the facility staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the facility staff is to use its best judgment to make the correct classification based on available data.

(2) Patient ethnicity - This data element shall be reported at Loop 2300 in the segment NTE02 as a numeric value. Acceptable codes are 1 = Hispanic or Latino Origin and 2 = Not of Hispanic or Latino Origin. In order to obtain this data, the facility staff retrieves the patient's response from a written form or asks the patient, or the person speaking for the patient to classify the patient. If the patient, or person speaking for the patient, declines to answer, the facility staff is to use its best judgment to make the correct classification based on available data.

(3) Other E-codes - These additional E-codes (maximum of 9 other E-codes, a total of 10 E-codes may be submitted) shall be reported (if applicable) in the following ANSI 837 Institutional Guide locations: Loop 2300, segments, HI05-2, HI06-2, HI07-2, HI08-2, HI09-2, HI10-2, HI11-2 and HI12-2. (The first E-code is generally reported in Loop 2300 segment HI04-2). E-codes may be submitted in the ANSI 837 Professional Guide in the following locations Loop 2300, data fields: HI02-2, HI03-2, HI04-2, HI05-2, HI06-2, HI07-2 or HI08-2 if applicable preceded by "BN" qualifying code in the respective data field HI02-1, HI03-1, HI04-1, HI05-1, HI06-1, HI07-1 or HI08-1.

(4) THCIC Identification Number - This data element shall be submitted in data segment REF02 (Secondary Identification Number) of one of the following Loops where the patient received the event services:

(A) Loop 2010AA associated with the "Billing Provider"; or

(B) Loop 2010AB associated with the "Pay-to provider"; or

(C) Loop 2310E (ANSI 837 Institutional Guide) or Loop 2310D (ANSI 837 Professional Guide) associated with the "Service Facility Provider".

(d) Facilities shall submit the required minimum data set in the following modified ANSI 837 Institutional Guide format for all patients that are uninsured or considered self-pay or covered by third party payers in which the payer requires the claim be submitted in an ANSI 837 Institutional Guide format or CMS-1450 format for which an event claim is required by this subchapter. The required minimum data set for the modified (as specified in subsection (c) of this section) ANSI 837 Institutional Guide format includes the following data elements as listed in this subsection:

(1) Patient Name:

(A) Patient Last Name;

(B) Patient First Name; and

(C) Patient Middle Initial.

(2) Patient Address:

(A) Patient Address Line 1;

(B) Patient Address Line 2 (if applicable);

(C) Patient City;

(D) Patient State;

(E) Patient ZIP; and

(F) Patient Country (if address is not in United States of America, or one of its territories).

(3) Patient Birth Date;

(4) Patient Sex;

(5) Patient Race;

(6) Patient Ethnicity;

(7) Patient Social Security Number;

(8) Patient Account Number;

(9) Patient Medical Record Number;

(10) Claim Filing Indicator Code (primary and secondary);

(11) Payer Name - Primary and secondary (if applicable, for both);

(12) National Plan Identifier - for primary and secondary (if applicable) payers (National Health Plan Identification number, if applicable and when assigned by the Federal Government);

(13) Type of Bill (Facility Type Code plus Claim Frequency Code);

(14) Statement Dates;

(15) Principal Diagnosis;

(16) Patient's Reason for Visit;

(17) External Cause of Injury (E-Code) up to 10 occurrences (if applicable);

(18) Other Diagnosis Codes - up to 24 occurrences (all applicable);

(19) Occurrence Code - up to 24 occurrences (if applicable);

(20) Occurrence Code Associated Date - up to 24 occurrences (if applicable);

(21) Value Code - up to 24 occurrences (if applicable);

(22) Value Code Associated Amount - up to 24 occurrences (if applicable);

(23) Condition Code - up to 24 occurrences (if applicable);

(24) Related Cause Code - up to 3 occurrences (if applicable);

(25) Other Provider or Other Health Professional Name (if applicable):

(A) Other Provider or Other Health Professional Last Name;

(B) Other Provider or Other Health Professional First Name; and

(C) Other Provider or Other Health Professional Middle Initial.

(26) Other Provider or Other Health Professional Primary Identifier (National Provider Identifier) (if applicable);

(27) Other Provider or Other Health Professional Secondary Identifier (Texas state license number) (if applicable);

(28) Operating Physician or Other Health Professional Name (if applicable):

(A) Operating Physician or Other Health Professional Last Name;

(B) Operating Physician or Other Health Professional First Name; and

(C) Operating Physician or Other Health Professional Middle Initial.

(29) Operating Physician or Other Health Professional Primary Identifier (National Provider Identifier) (if applicable);

(30) Operating Physician or Other Health Professional Secondary Identifier (Texas state license number) (if applicable);

(31) Total Claim Charges;

(32) Revenue Service Line Details (up to 999 service lines) (all applicable);

(A) Revenue Code;

(B) Procedure Code;

(C) HCPCS Procedure Modifier 1 (applicable to each submitted Procedure code);

(D) HCPCS Procedure Modifier 2 (applicable to each submitted Procedure code);

(E) HCPCS Procedure Modifier 3 (applicable to each submitted Procedure code);

(F) HCPCS Procedure Modifier 4 (applicable to each submitted Procedure code);

(G) Charge Amount;

(H) Unit Code;

(I) Unit Quantity;

(J) Unit Rate; and

(K) Non-covered Charge Amount.

(33) Service Provider Name;

(34) Service Provider Primary Identifier - Provider Federal Tax ID (EIN) or National Provider Identifier;

(35) Service Provider Address:

(A) Service Provider Address Line 1;

(B) Service Provider Address Line 2 (if applicable);

(C) Service Provider City;

(D) Service Provider State; and

(E) Service Provider ZIP; and

(36) Service Provider Secondary Identifier - THCIC 6-digit facility ID assigned to each facility.

(e) Facilities shall submit the following required minimum data set in the following modified ANSI 837 Professional Guide format for all patients for which an event claim is required by a third party payer to be in the ANSI 837 Professional Guide format or CMS-1500 format and required to be submitted under this subchapter. At a facility's option, a facility may choose to submit the required data set listed in subsection (d) of this section. The required minimum data set for the modified (as specified in subsection (c) of this section) ANSI 837 Professional Guide format includes the following data elements as listed in this subsection.

(1) Patient Name.

(A) Patient Last Name;

(B) Patient First Name; and

(C) Patient Middle Initial;

(2) Patient Address.

(A) Patient Address Line 1;

(B) Patient Address Line 2 (if applicable);

(C) Patient City;

(D) Patient State;

(E) Patient ZIP; and

(F) Patient Country (if address is not in United States of America or one of its territories);

(3) Patient Birth Date;

(4) Patient Sex;

(5) Patient Race;

(6) Patient Ethnicity;

(7) Patient Social Security Number;

(8) Patient Account Number;

(9) Patient Medical Record Number (if applicable);

(10) Claim Filing Indicator Code (Payer Source - primary and secondary (if applicable for secondary payer source);

(11) Payer Name - Primary and secondary (if applicable, for both);

(12) National Plan Identifier - for primary and secondary (if applicable) payers (National Health Plan Identification number, if applicable and when assigned by the federal government);

(13) Type of Bill (Facility Type Code plus Claim Frequency Code);

(14) Service Date;

(15) Principal Diagnosis;

(16) Other Diagnosis Codes - up to 7 occurrences (all applicable);

(17) Related Cause Code - up to 3 occurrences (if applicable);

(18) Procedure Codes - up to 50 occurrences (all applicable):

(A) HCPCS Procedure Modifier 1 (applicable to each submitted Procedure code);

(B) HCPCS Procedure Modifier 2 (applicable to each submitted Procedure code);

(C) HCPCS Procedure Modifier 3 (applicable to each submitted Procedure code);

(D) HCPCS Procedure Modifier 4 (applicable to each submitted Procedure code);

(E) Charge Amount;

(F) Unit Code; and

(G) Unit Quantity;

(19) Rendering Provider or Rendering Other Health Professional Name (Up to 2 occurrences):

(A) Rendering Provider or Rendering Other Health Professional Last Name;

(B) Rendering Provider or Rendering Other Health Professional First Name; and

(C) Rendering Provider or Rendering Other Health Professional Middle Initial;

(20) Rendering Provider or Rendering Other Health Professional Primary Identifier (National Provider Identifier) (Up to 2 occurrences);

(21) Rendering Provider or Rendering Other Health Professional Secondary Identifier (Texas state license number) (if primary identifier not available) (Up to 2 occurrences);

(22) Total Claim Charges;

(23) Service Provider Name;

(24) Service Provider Primary Identifier--Provider Federal Tax ID (EIN) or National Provider Identifier;

(25) Service Provider Address:

(A) Service Provider Address Line 1;

(B) Service Provider Address Line 2 (if applicable);

(C) Service Provider City;

(D) Service Provider State; and

(E) Service Provider ZIP;

(26) Service Provider Secondary Identifier--THCIC 6-digit Hospital ID assigned to each facility.

(f) Facilities shall submit the required minimum data set to DSHS for each patient who has one or more of the following revenue codes for services rendered to the patient in the facility.

(1) 0321 Radiology--Diagnostic Angiocardiology;

(2) 0322 Radiology--Diagnostic Arthrography;

(3) 0323 Radiology--Diagnostic Arteriography;

(4) 0329 Radiology--Diagnostic Other Radiology - Diagnostic;

(5) 0330 Radiology--Therapeutic General Classification;

(6) 0333 Radiology--Therapeutic Radiation Therapy;

(7) 0339 Radiology--Therapeutic Other Radiology - Therapeutic;

(8) 0340 Nuclear Medicine General Classification;

(9) 0341 Nuclear Medicine Diagnostic;

(10) 0342 Nuclear Medicine Therapeutic;

(11) 0343 Nuclear Medicine Diagnostic Pharmaceuticals;

(12) 0344 Nuclear Medicine Therapeutic Pharmaceuticals;

(13) 0349 Nuclear Medicine Other Nuclear Medicine;

(14) 0350 Computed Tomography (CT) Scan General Classification;

(15) 0351 Computed Tomography (CT)--Head Scan;

(16) 0352 Computed Tomography (CT)--Body Scan;

(17) 0359 Computed Tomography (CT)--Other;

(18) 0360 Operating Room Services General Classification;

(19) 0361 Operating Room Services Minor Surgery;

(20) 0369 Operating Room Services Other Operating Room Services;

(21) 0400 Other Imaging Services General Classification;

(22) 0401 Other Imaging Services Diagnostic Mammography;

(23) 0403 Other Imaging Services Screening Mammography;

(24) 0404 Other Imaging Services Positron Emission Tomography (PET);

(25) 0409 Other Imaging Services Other Imaging Services;

(26) 0481 Cardiology Cardiac Catheterization Lab;

(27) 0483 Cardiology Echocardiology;

(28) 0489 Cardiology Other Cardiology Services;

(29) 0490 Ambulatory Surgical Care General Classification;

(30) 0499 Ambulatory Surgical Care Other Ambulatory Surgical;

(31) 0500 Outpatient Services General Classification;

(32) 0509 Outpatient Services Other Outpatient;

(33) 0610 Magnetic Resonance Technology General Classification;

(34) 0611 Magnetic Resonance Technology Magnetic Resonance Imaging (MRI)--Brain/Brainstem;

(35) 0612 Magnetic Resonance Technology Magnetic Resonance Imaging (MRI)-- Spinal Cord/Spine;

(36) 0614 Magnetic Resonance Technology Magnetic Resonance Imaging (MRI)-- Other;

(37) 0615 Magnetic Resonance Technology Magnetic Resonance Angiography (MRA)--Head and Neck;

(38) 0616 Magnetic Resonance Technology Magnetic Resonance Angiography (MRA)--Lower Extremities;

(39) 0618 Magnetic Resonance Technology Magnetic Resonance Angiography (MRA)--Other;

(40) 0619 Magnetic Resonance Technology Other Magnetic Resonance Technology;

(41) 0760 Specialty Room--Treatment/Observation Room General Classification;

(42) 0761 Specialty Room--Treatment Room;

(43) 0762 Specialty Room--Observation Room; and

(44) 0769 Specialty Room--Other Specialty Room.

(g) This section is effective 90 calendar days after being published in the *Texas Register.* The department will not implement or enforce this section until July 1, 2009, at the earliest.

§421.68. Event Data Release.

(a) DSHS records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §§108.010, 108.011 and 108.013 or other state or federal law. Copies of such records may be obtained upon request and upon payment of user fees established by DSHS. The public use data file shall be available for public inspection during normal business hours. Event claims in the original format as submitted to DSHS are not available to the public, are not stored at DSHS and are exempt from disclosure pursuant to Health and Safety Code, §§108.010, 108.011 and 108.013, and shall not be released. Likewise, patient and physician identifying data collected by the DSHS through editing of facility data shall not be released.

(b) Creation of codes and identifiers. DSHS shall develop the following codes and identifiers, as listed in paragraphs (1) - (2) of this subsection, required for creation of the public use data file and for other purposes.

(1) DSHS shall create a process for assigning uniform patient identifiers, uniform physician identifiers and uniform other health professional identifiers using data elements collected. This process is confidential and not subject to public disclosure. Any documents or records produced describing the process or disclosing the person associated with an identifier are confidential and not subject to public disclosure.

(2) DSHS shall create a process for assigning geographic identifiers to each event record.

(c) Requests for outpatient event data files including data on one or more providers are matters of public record and copies of all requests shall be maintained by DSHS in accordance with DSHS records retention schedule.

(d) All users including Texas state agencies that request outpatient event data shall abide by the data use agreement.

(e) DSHS shall establish procedures for screening all requests to assure that filling the request will not violate the confidentiality provisions of Health and Safety Code, Chapter 108.

(f) The data elements specified for outpatient event reports in this section do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010.

(g) Creation of public use data file. DSHS will create a public use data file by creating a single record for each reportable outpatient event and adding, modifying or deleting data elements in the following manner as listed in this subsection:

(1) delete patient and insured name, Social Security number, address and certificate data elements, any patient identifying information, and patient control and medical record numbers;

(2) convert patient birth date to age;

(3) convert procedure dates to a code for the day of the week;

(4) convert occurrence dates to day values;

(5) delete physician and other health professional names and numbers and assign a alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as "rendering," "operating or other" or "other provider" on patients;

(6) assign codes indicating the primary and secondary sources of payment;

(7) the minimum cell size required by Health and Safety Code, §108.011(i)(2), shall be five, unless DSHS determines that a higher cell size is required to protect the confidentiality of an individual patient or physician;

(8) convert all procedure codes to HCPCS codes (in the version that is current for the date the data was due to be submitted or the version in effect at the date of service);

(9) add nationally accepted risk and severity adjustment scores utilizing an algorithm approved by DSHS, when available and applicable;

(10) data elements to be included in the public use data file:

(A) Event Year and Quarter;

(B) Provider Name (Facility Name);

(C) THCIC Identification Number;

(D) Facility Type Indicators;

(E) Patient Sex/Gender;

(F) Patient ZIP Code;

(G) County Code;

(H) Health Service Region Code;

(I) Patient State;

(J) Patient Race;

(K) Patient Ethnicity;

(L) Claim Type Indicator;

(M) Type of Bill;

(N) Principal Diagnosis Code (Current version of ICD codes at the time data is submitted);

(O) Other Diagnosis Codes (Up to 24 diagnosis codes can be submitted and reported. Current version of ICD codes at the time data is submitted);

(P) Procedure codes (Up to 24 procedure codes can be submitted and reported. Current version of HCPCS codes at the time data is submitted);

(Q) Reason For Visit (Current version of ICD or HCPCS codes at the time data is submitted);

(R) External Cause of Injury (E-codes), (if applicable) (Current version of ICD codes at the time data is submitted. Up to nine (9) E-codes can be submitted and reported);

(S) Related Cause Code, (if applicable) (Up to three (3) codes can be submitted and reported);

(T) Day of Week Patient is provided services code (Sunday = 1, Monday = 2, Tuesday = 3, Wednesday = 4, Thursday = 5, Friday = 6, Saturday = 7);

(U) Age group of patient;

(V) CRG Code (and associated codes if applicable);

(W) APG Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(X) APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Y) APG Type Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(Z) Final APG Assignment Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(AA) Final APG Category Code (Obtained from 3M APG Grouper) if applicable (Up to 10);

(BB) APC Procedure Code (if applicable) (Up to 10);

(CC) APC Procedure Status Indicator Code (if applicable) (Up to 10);

(DD) APC Diagnosis Edits (if applicable) (Up to 10);

(EE) APC Procedure Code Edits (if applicable) (Up to 10);

(FF) APC Weight (if applicable) (Up to 10);

(GG) APC Base Procedure (if applicable) (Up to 10);

(HH) Clinical Classification Software Category Codes and associated codes, if applicable;

(II) Uniform Physician Identifier assigned to Rendering Physician or Rendering Other Health Professional;

(JJ) Uniform Physician Identifier assigned to Operating Physician or Other Physician or Other Health Professional;

(KK) Uniform Physician Identifier assigned to Other Provider or Other Health Professional;

(LL) Ancillary Service--Other Charges;

(MM) Ancillary Service--Pharmacy Charges;

(NN) Ancillary Service--Medical/Surgical Supply Charges;

(OO) Ancillary Service--Durable Medical Equipment Charges;

(PP) Ancillary Service--Used Durable Medical Equipment Charges;

(QQ) Ancillary Service--Physical Therapy Charges;

(RR) Ancillary Service--Occupational Therapy Charges;

(SS) Ancillary Service--Speech Pathology Charges;

(TT) Ancillary Service--Inhalation Therapy Charges;

(UU) Ancillary Service--Blood Charges;

(VV) Ancillary Service--Blood Administration Charges;

(WW) Ancillary Service--Operating Room Charges;

(XX) Ancillary Service--Lithotripsy Charges;

(YY) Ancillary Service--Cardiology Charges;

(ZZ) Ancillary Service--Anesthesia Charges;

(AAA) Ancillary Service--Laboratory Charges;

(BBB) Ancillary Service--Radiology Charges;

(CCC) Ancillary Service--MRI Charges;

(DDD) Ancillary Service--Outpatient Services Charges;

(EEE) Ancillary Service--Emergency Service Charges;

(FFF) Ancillary Service--Ambulance Charges;

(GGG) Ancillary Service--Professional Fees Charges;

(HHH) Ancillary Service--Organ Acquisition Charges;

(III) Ancillary Service--ESRD Revenue Setting Charges;

(JJJ) Ancillary Service--Clinic Visit Charges;

(KKK) Total Charges--Ancillary;

(LLL) Total Non-Covered Ancillary Charges;

(MMM) Total Charges;

(NNN) Total Non-Covered Charges;

(OOO) Encounter Identifier--a unique number for each encounter for the quarter;

(PPP) Service Line Revenue Code;

(QQQ) Service Line Procedure Code;

(RRR) HCPCS/HIPPS Procedure Code;

(SSS) HCPCS/HIPPS Procedure Modifiers (Up to 4 may be submitted and reported);

(TTT) Service Line Charge Amount;

(UUU) Service Line Unit Code;

(VVV) Service Line Unit Count;

(WWW) Service Line Non-Covered Charge Amount; and

(XXX) Patient Country (when the address is not in United States of America and confidentiality can be maintained).

(h) Release of public use data files. DSHS shall release in an aggregate form, without uniform patient, physician or other health professional identifiers, public use data relating to facilities described by the Health and Safety Code, §108.0025(1), that are not rural providers because they do not meet the requirements of Health and Safety Code, §108.0025(2).

(1) DSHS will make available a public use data file on electronic, magnetic or optical media for each quarter.

(2) DSHS shall release public use data from facilities that have certified the data as required by §421.66 of this title (relating to Certification of Compiled Event Data). A facility's failure to execute the certification form by the dates specified in §421.66(d) of this title, or election to not certify the discharge encounter data shall not prevent the DSHS from releasing the facility's data if DSHS believes the data submitted is reasonably accurate and complete. DSHS may suppress for any quarter's data one or more data elements if deemed necessary to comply with provisions of the statute.

(3) If additional event claims (not previously submitted as specified in §421.65(b)(4) of this title (relating to Acceptance of Event Files and Correction of Data Content Errors), excluding replacement, adjustments and void/cancel claims become available after the initial release of the public use data file for any quarter, DSHS will add the discharge claims, that are received on or prior to the dates specified in §421.63(a)(1) - (4) of this title (relating to Schedule for Filing Event Files) of the following quarter, to the public use data file and make the additional records available to the public.

(4) A public use data file which is disseminated to a requestor shall not be considered a report issued by DSHS as referenced in Health and Safety Code, §108.011(f), and requires no additional opportunity for the facility to review or comment on the data.

(5) With any public use data file prepared by the DSHS, DSHS shall attach all comments submitted by providers, which relate to any data included in the file. DSHS shall also make these comments available at DSHS offices and on the DSHS Internet site.

(i) An outpatient event research data file may be released provided the following criteria are met:

(1) the DSHS Outpatient Data Research Data File Request Form is completed and submitted to DSHS;

(2) the requestor has made payment according to DSHS' fee schedule;

(3) the Institutional Review Board reviews the research request and has determined the proposed research outcome can be achieved with the requested data;

(4) the Institutional Review Board grants authorization to the request or restricts access to specified data elements determined to be inappropriate for the research proposal in accordance with §421.10 of this title (relating to Institutional Review Board);

(5) the requestor agrees to dispose of the research data using authorized methods by the established end date stated on the written data use agreement; and

(6) the requestor has signed a written data use agreement.

(j) This section is effective 90 calendar days after being published in the *Texas Register*. The department will not implement or enforce this section until July 1, 2009, at the earliest.

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

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General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.37

The Texas Youth Commission (TYC) adopts new §93.37, concerning Alleged Sexual Abuse, with minor clarification and grammatical changes to the proposed text as published in the August 15, 2008, issue of the *Texas Register* (33 TexReg 6550).

The justification for the new rule is protection of youth against all forms of sexual abuse, as well as compliance with SB103 (80th Texas Legislature), which requires TYC to adopt a zero-tolerance policy toward sexual abuse.

The new rule will establish TYC's zero-tolerance policy toward any form of sexual abuse of youth under TYC custody. The new rule also establishes standards for reporting and investigating alleged sexual abuse, as well as provisions for screening, medical and mental health follow-up, and housing assignments.

Comments concerning the proposed rule were received from Advocacy, Inc. A summary of the comments and TYC's responses are provided below.

Comment: TYC appears to rely heavily on multiple cross-referencing to fill in the "gaps" in the process of addressing an allegation of sexual abuse. Referencing other rules and guidelines, as opposed to incorporating them into the rule itself, makes for a fragmented, and in some areas, incomplete process. Some of the cross referenced policies set a rigid, disciplinary, and puni-

tive tone in terms of youth management which is contrary to the spirit and intent of the reforms underway.

Response: TYC follows the practice of cross referencing to applicable rules as a means of avoiding repetition, and potential discrepancies, between rules. Additionally, some of the processes set out in cross-referenced rules (such as child abuse investigations or collection of evidence) address alleged sexual abuse, but apply more broadly to any type of abuse allegation. Including or repeating the broader content within this rule would require additional exclusions or additional cross referencing. As to policies which may present a tone that is contrary to the intent of the reform effort, all policies are under review and any provisions which conflict with legislatively mandated or management-directed reforms will be separately proposed for amendment. No changes were made to the rule as a result of the comment.

Comment: The proposed rule does not speak to several principles outlined in the National Prison Rape Elimination Commission (NPREC) Standards for the Prevention, Detection, and Monitoring of Sexual Abuse in Juvenile Facilities.

Response: TYC acknowledges that not every NPREC standard is reflected in this rule. The rule is primarily a zero-tolerance policy, with certain elements of the NPREC standards used as a basis for defining sexual abuse and establishing protocols for response and auditing. TYC is establishing a project management plan that will serve as guide for implementing all draft NPREC standards in their current form. As the draft NPREC standards move closer to final adoption as federal regulations, TYC anticipates developing additional policy and procedure to fully comply with the regulations. No changes were made to the rule as a result of the comment.

Comment: The proposed policy should contain a provision that will ensure that reasonable accommodations will be provided to youth who need them in order to avail themselves of the benefits of this sexual abuse policy.

Response: TYC has adopted separate rules that provide for basic rights of youth in TYC custody, including the right to equal treatment for youth with disabilities, as well as procedures for resolving ADA-related grievances. These rules cover all TYC facilities, operations, and programming. No changes were made to the rule as a result of the comment.

Comment: The proposed policy should include language that will ensure the privacy and confidentiality of a victim or reporter of sexual abuse.

Response: TYC has adopted separate rules that address confidentiality of all youth information, including information contained in a report of any kind of abuse. These rules cover all TYC facilities, operations, and programming. No changes were made to the rule as a result of the comment.

Comment: The proposed policy should repeat the basic right currently in rule which provides youth access to attorneys and legal representation.

Response: The existing rule providing for the right of access to attorneys and courts is binding on all TYC facilities and programs. No changes were made to the rule as a result of the comment.

Comment: The proposed rule should expand the training requirement to be specific with respect to areas of training.

Response: The specific training modules for staff are addressed in the agency's training requirements grid. These modules are subject to change as determined by agency needs, identified priorities, and internal management practices. No changes were made as result of the comment.

The new rule is adopted under the Human Resources Code, §61.055, which requires the commission to adopt a zero-tolerance policy concerning the detection, prevention, and punishment of the sexual abuse, including consensual sexual contact, of children in the custody of the commission.

§93.37. Alleged Sexual Abuse.

(a) Purpose. The Texas Youth Commission (TYC) has zero tolerance for any form of sexual abuse of youth under TYC jurisdiction. This rule establishes prohibited conduct and behaviors that are broader than those established by statute as violations of law. This rule sets forth standards for reporting and investigating alleged sexual abuse of TYC youth. This rule also addresses screening and housing placement procedures for youth who may be potential victims or perpetrators of sexual abuse.

(b) Applicability. This rule applies to TYC-operated and contract care residential facilities.

(c) Additional References.

(1) For reporting obligations and investigation procedures, see §93.33 of this title (relating to Alleged Abuse, Neglect and Exploitation).

(2) For procedures regarding appeals to the chief executive officer, see §93.53 of this title (relating to Appeal to Executive Director).

(3) For procedures regarding youth orientation, see §91.15 of this title (relating to Youth Orientation).

(4) For procedures regarding preservation of evidence, see §97.11 of this title (relating to Control of Unauthorized Items Seized).

(5) For youth grievance procedures, see §93.31 of this title (relating to Youth Grievance System).

(6) For restrictions on cross-gender searches, see §97.9 of this title (relating to Youth Search).

(7) For referrals to criminal court, see §95.5 of this title (relating to Referral to Criminal Court).

(8) For procedures regarding investigations of youth death, see §99.51 of this title (relating to Death of a Youth).

(9) For procedures regarding administrative disciplinary sanctions for employees, volunteers, and contract personnel, see TYC's personnel policy manual.

(d) Definitions. Sexual Abuse--Includes sexually abusive contact, sexually abusive penetration, indecent exposure, voyeurism, and sexual harassment, as defined below.

(1) Sexually Abusive Contact--touching without penetration of the genitalia, anus, groin, breast, inner thigh, or buttocks, either directly or through clothing, of another person.

(2) Sexually Abusive Penetration--contact between the penis and vagina or the penis and anus; contact between the mouth and the penis, vagina, or anus; or penetration of the anal or genital opening of another person by hand, finger, or other object.

(3) Indecent Exposure--the display by a staff member of his/her genitalia, buttocks, or breast in the presence of a youth.

(4) Voyeurism--an invasion of a youth's privacy by a staff member unrelated to official duties, such as peering at a youth who is showering or undressing in his or her cell or requiring a youth to expose him or herself for reasons unrelated to official duties.

(5) Sexual Harassment--repeated verbal statements, comments, or behaviors of a sexual nature to a youth by any individual including threats, extortion, bribery, demeaning references to gender, derogatory comments about body or clothing, or profane or obscene language, gestures, or written comments.

(e) General Provisions.

(1) It is the policy of TYC to ensure that any form of sexual activity between youth or between youth and staff/volunteers/contract employees, regardless of consensual status, is strictly prohibited. Such conduct is subject to administrative disciplinary sanctions and may result in criminal prosecution.

(2) Youth under TYC jurisdiction whose placement is in a TYC-operated residential facility or contracted residential program cannot give consent to engage in behavior defined as sexual abuse under this policy, regardless of the youth's age.

(3) Retaliation against any youth or employee who reports or assists in the investigation of alleged sexual abuse is strictly prohibited and is grounds for disciplinary action up to and including termination of employment.

(4) The facility administrator is the person responsible for the implementation and enforcement of this rule.

(f) Reporting of Sexual Abuse.

(1) Any TYC employee, volunteer, or contractor who has cause to believe that a youth in any program or facility under TYC jurisdiction has been or may be subjected to an act or threat of sexual abuse or receives a report of sexual abuse or possible sexual abuse, whether verbally or in writing, must immediately notify the proper authorities in accordance with agency policy and state law.

(2) Any youth or person advocating on behalf of a youth may report an act or threat of sexual abuse to:

(A) the TYC Office of Inspector General 24-hour Incident Reporting Center (hotline);

(B) any TYC staff member, volunteer, contract employee, or any other individual who can report the incident; or

(C) any law enforcement agency.

(g) Actions of the Facility Administrator Regarding a Report of Alleged Sexual Abuse. The facility administrator, in consultation with the appropriate law enforcement agency, will take the following actions immediately upon receipt of the report:

(1) notify the victim's parents or guardian of the report;

(2) take immediate steps to protect the victim by ensuring that the alleged victim and alleged perpetrator are physically separated pending an investigation, which may include, but is not limited to:

(A) dorm transfer or other placement within the facility; or

(B) administrative transfer to another facility or program; and

(3) preserve evidence that may be pertinent to an investigation of the matter.

(h) Standards of Care.

(1) Screening.

(A) Within 24 hours after each of the following events, each youth will be screened for potential vulnerability to be sexually abused or tendencies of acting out with sexually aggressive behavior or the likelihood of sexually abusing others:

(i) admission to TYC; and

(ii) transfer to another TYC-operated or contract care residential facility.

(B) Youth identified as high risk for sexual victimization are monitored and counseled.

(C) Youth identified as high risk with a history of sexually abusive behavior are monitored, counseled, and provided appropriate treatment.

(2) Placement.

(A) When a youth is identified as being at risk for sexual abuse at his/her current dorm or room assignment, the screening staff will request that the facility administrator move the youth to an alternate placement within the facility.

(B) If an alternative placement cannot be arranged due to lack of available beds, the facility administrator will develop a written plan of action that provides a safe and secure environment for the victim and ensure the plan is implemented.

(C) Upon facility transfer, the receiving staff will review any previous screening regarding sexually abusive behavior or sexual victimization and make a recommendation for placement and mental health services if needed.

(D) In cases of youth-on-youth sexual abuse, the alleged perpetrator will be separated from the alleged victim pending the outcome of the investigation.

(3) Medical Services.

(A) When referred by the TYC Office of Inspector General or local law enforcement, a victim of sexually abusive penetration will be transported immediately to a hospital, clinic, emergency room, or infirmary which can provide for medical examination by a Sexual Assault Nurse Examiner (SANE) or equally qualified medical personnel.

(B) A victim of any type of sexual abuse will:

(i) receive a mental health assessment as soon as possible;

(ii) receive a medical assessment as soon as possible;

(iii) be provided protective housing as needed; and/or

(iv) be provided emergency counseling to include independent certified rape crisis counseling, if desired by the victim.

(4) Mental Health Services.

(A) If a mental health provider (MHP), as defined in §91.87 of this title (relating to Suicide Alert Explanation of Terms), determines that a youth needs mental health services, the MHP must notify the appropriate staff of his/her recommendation.

(B) Upon notification of the MHP's recommendation for continued mental health services, the appropriate staff will implement the recommendation(s) and document accordingly.

(i) Standards for Investigations. An investigation is conducted and documented in accordance with §93.33 of this title and/or TYC Office of Inspector General criminal investigation procedures whenever sexual abuse is alleged, is threatened, or occurs.

(j) Prevention Procedures.

(1) Upon admission to TYC or when a youth's residential placement changes, the youth shall be provided with information regarding sexual abuse including prevention/intervention, self-protection, reporting, medical treatment, and mental health counseling. During orientation, the sexual abuse information shall be communicated, verbally and in writing, in a language clearly understood by the youth.

(2) To prevent sexual abuse and provide a safe and secure environment, each TYC-operated or contracted residential facility will provide the highest level of supervision of youth to prevent sexual abuse through:

(A) a staff to youth ratio as required under applicable statute or contract provisions;

(B) surveillance equipment to aid staff in detecting inappropriate behavior; and

(C) a structural facility design that allows visual supervision of youth in areas such as shower and restroom areas, dormitories, education buildings, recreational areas, etc.

(k) Annual Audit and Certification.

(1) TYC's executive commissioner or designee will annually assess safety and compliance and develop action plans to achieve full compliance with PREA standards. The approved internal assessment will be posted for publication on the agency website and provided to appropriate legislative oversight committees.

(2) TYC's executive commissioner will certify that the agency is in full compliance or has established an action plan to enable full compliance with the Prison Rape Elimination Act standards based on the results from annual audits conducted by an independent auditor.

(l) Annual Reporting. The agency will participate in the annual surveys and any other ad hoc investigations conducted by the Bureau of Justice Statistics or its contractors/designees.

(m) Record Keeping. All case records associated with claims of sexual abuse, including incident reports, investigative reports, youth information, case disposition, medical and counseling evaluation findings, and recommendation for post-release treatment and/or counseling will be retained in accordance with the agency's record retention schedule.

(n) Training Requirements. All staff will receive annual training regarding the prevention and identification of sexual abuse.

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 17, 2008.

TRD-200805954
Cheryln K. Townsend
Executive Commissioner
Texas Youth Commission
Effective date: December 15, 2008
Proposal publication date: August 15, 2008
For further information, please call: (512) 424-6475

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §19.210 and new §19.210, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. New §19.210 is adopted with changes to the proposed text published in the August 8, 2008, issue of the *Texas Register* (33 TexReg 6342). The repeal of §19.210 is adopted without changes to the proposed text.

The new section and repeal are adopted in part, to implement Senate Bill (SB) 344, 80th Legislature, Regular Session, 2007. SB 344, in part, amended Texas Health and Safety Code, §242.0336. Texas Health and Safety Code, §242.0336, was amended to clarify that a change of ownership (CHOW) license is a 90-day temporary license; that DADS may not issue a temporary CHOW license before the 31st day after receipt of a completed application, except DADS may waive the 30-day requirement under certain circumstances; that DADS approves or denies an application not later than the 31st day after receipt of the application; and that DADS may conduct a desk review instead of an on-site inspection or survey under certain circumstances after the issuance of a CHOW license.

The new section also modifies the definition of a CHOW for different types of business entities and clarifies the documentation and time frames required for a CHOW application and issuance of a license.

DADS received no comments regarding adoption of the new section and repeal. However, the title for §19.210 was changed to Change of Ownership License to avoid having two sections in Chapter 19 with the same title.

40 TAC §19.210

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

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 10, 2008.

TRD-200805883
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: December 1, 2008
Proposal publication date: August 8, 2008
For further information, please call: (512) 438-3734

40 TAC §19.210

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.210. Change of Ownership License.

(a) A license holder may not transfer the license as part of a change of ownership. If there is a change of ownership, the license holder's license becomes invalid on the date of the change. The new owner must obtain a change of ownership license in accordance with subsection (b) of this section. The license holder and new license applicant must notify the Department of Aging and Disability Services before a change of ownership occurs.

(1) Sole proprietor. A change of ownership occurs if:

(A) the sole proprietor who is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity not licensed to operate the facility; or

(B) upon the death of the sole proprietor, the facility continues to operate.

(2) General Partnership (as defined in the Texas Business Organization Code, §1.002). A change of ownership occurs if:

(A) a partner of a general partnership that is licensed to operate the facility is added or substituted;

(B) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(3) Limited Partnership (as defined in the Texas Business Organization Code, §1.002). A change of ownership occurs if:

(A) a general partner of a limited partnership that is licensed to operate the facility is added or substituted;

(B) ownership of the limited partnership that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(C) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(E) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(4) Nonprofit organization. A change of ownership occurs if:

(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(5) For-profit corporation or limited liability company. A change of ownership occurs if:

(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(D) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:

(A) the governmental entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility; or

(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(7) Trust, living trust, estate or any other entity type not included in paragraphs (1) - (6) of this subsection. A change of ownership occurs if:

(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

(C) for any reason other than correction of an error, the federal taxpayer identification number changes; or

(D) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(8) For license holders that have multiple-level ownership structures, a change of ownership also occurs if any action described in paragraphs (1) - (7) of this subsection occurs at any level of the license holder's entire ownership structure.

(9) For paragraphs (3)(B) and (5)(A) of this subsection, the substitution of the executor of a decedent's estate for a decedent is not the addition of a controlling person.

(10) A conversion as described in Subchapter C of Chapter 10 of the Texas Business Organization Code is not a change of ownership if no controlling person is added.

(b) The prospective new owner must submit to DADS:

(1) a complete application for a change of ownership license under §19.201 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §19.216 of this subchapter (relating to License Fees); and

(3) signed, written notice from the facility's existing license holder of his intent to transfer operation of the facility to the applicant beginning on a date specified by the applicant.

(c) To avoid a facility operating while unlicensed, an applicant must submit all items in subsection (b) of this section at least 30 days before the anticipated date of the sale or other transfer to the new owner. An application is considered timely filed if the application is postmarked by the filing deadline and received in DADS' Licensing and Credentialing Section, Regulatory Services Division within 15 days after the date of the postmark.

(d) The 30-day notification from the applicant or the 30-day notification from the existing license holder or both may be waived if DADS determines that the applicant presented evidence showing that circumstances prevented the submission of the 30-day notice and if DADS determines that not waiving the 30-day notification would create a threat to resident welfare or health and safety. If the applicant has filed a timely and sufficient application for a change of ownership license and meets all requirements for a license, DADS issues a change of ownership license effective on the date requested by the applicant.

(e) A change of ownership license is a 90-day temporary license issued to an applicant who proposes to become the new operator of a nursing facility that exists on the date the application is filed. Upon receipt of a complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant, DADS issues a change of ownership license to the prospective new owner if DADS finds that the prospective new owner and any other persons listed in §19.201(f) of this subchapter meet the requirements in §19.201(e)(2) and (g) of this subchapter.

(1) All applications must be made on forms prescribed by and available from DADS. Each application must be completed in accordance with DADS' instructions, signed, and notarized, and must contain all forms required by DADS.

(2) DADS approves or denies an application for a change of ownership license not later than the 31st day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of his intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application, fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(3) If the applicant meets the requirements of §19.201 of this subchapter and passes an initial inspection, desk review, or a subsequent inspection before the change of ownership license expires, a regular two-year license is issued. The effective date of the regular two-year license is the same date as the effective date of the change of ownership and cannot precede the date the application is received by DADS' Licensing and Credentialing Section, Regulatory Services Division.

(4) When an applicant has not previously held a license in Texas, a probationary license is issued following the change of ownership license. The effective date of the probationary one-year license is the same date as the change of ownership license and cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(5) A change of ownership license expires on the 90th day after its effective date.

(6) DADS conducts an on-site inspection to verify compliance with the requirements after issuing a change of ownership license.

(7) DADS may allow a desk review in lieu of an on-site inspection or survey if:

(A) the facility specifically requests a desk review and submits evidence during the application process that no new controlling person is added;

(B) DADS determines the change does not involve a new controlling person; and

(C) the facility meets the standards for operation based on the most recent on-site inspection.

(f) A nursing facility license holder may be eligible to acquire, on an expedited basis, a license to operate another existing nursing facility. A license holder that appears on the expedited change of ownership list may be granted expedited approval in obtaining a change of ownership license to operate another existing nursing facility in Texas.

(1) DADS maintains and keeps current a list of nursing facility license holders that operate an institution in Texas and that have met the criteria to qualify for an expedited change of ownership according to the information available to DADS.

(2) In order to establish and maintain the expedited change of ownership list, DADS uses the criteria found in §19.2322(e) of this chapter (relating to Medicaid Bed Allocation Requirements). A nursing facility license holder meeting these criteria appears on the list and

is eligible to be issued, on an expedited basis, a change of ownership license to operate another existing institution in Texas.

(3) A nursing facility license holder appearing on the list must submit an affidavit that demonstrates the license holder continues to meet the criteria established for being listed on the expedited change of ownership list, and continues to meet the requirements in §19.201(e)(2) and (g) of this subchapter.

(4) DADS processes a change of ownership license application on an expedited basis for a nursing facility license holder on the list if DADS finds that the license holder and any other persons listed in §19.201(f) of this subchapter meet the requirements in §19.201(e)(2) and (g) of this subchapter.

(5) If the nursing facility license holder requesting a change of ownership license on an expedited basis complies with subsections (b) - (e) of this section, DADS approves or denies the application for a change of ownership license not later than the 15th day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date requested in the application. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(6) An applicant for a change of ownership license on an expedited basis must meet all applicable requirements that an applicant for renewal of a license must meet. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(g) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DADS and submit a copy of a certificate of amendment from the Secretary of State's office. On receipt of the certificate of amendment, the current license will be re-issued in the license holder's new name.

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 10, 2008.

TRD-200805884
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

CHAPTER 44. CLIENT MANAGED PERSONAL ATTENDANT SERVICES
SUBCHAPTER B. RESPONSIBILITIES OF ALL PROVIDER AGENCIES
DIVISION 6. CO-PAYMENT DETERMINATION
40 TAC §44.61

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §44.61 in Chapter 44, Client Managed Personal Attendant Services, with a change to the proposed text published in the August 1, 2008, issue of the *Texas Register* (33 TexReg 6095).

The amendment is adopted to update the guidelines for determining an individual's co-payment in the Client Managed Personal Attendant Services Program. The amendment replaces a chart used to determine a co-payment amount, based on income, with a reference to the Community Care for Aged and Disabled Handbook, where the chart will be maintained and updated at least biennially.

DADS received no comments regarding adoption of the amendment. However, the word "co-pay" was changed to "co-payment" to be consistent within the section.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§44.61. How is a client's co-payment determined and what are the procedures for collecting the co-payment?

(a) A client's co-payment is a percentage of the monthly cost for services provided to the client. To arrive at a client's co-payment, a provider agency must:

(1) determine the client's total monthly income in accordance with §44.62 of this division (relating to For purposes of calculating a client's co-payment, how must a provider agency determine a client's total monthly income?);

(2) determine the client's net monthly income in accordance with §44.65 of this division (relating to For purposes of calculating a client's co-payment, how must a provider agency determine a client's net monthly income?);

(3) determine the client's percentage amount by referencing the co-payment schedule located in the Community Care for Aged and Disabled handbook;

(4) determine the monthly cost for services by multiplying the number of units of service in the client's monthly service plan by the reimbursement rate contained in the contract; and

(5) arrive at the amount of the client's monthly co-payment by multiplying the client's percentage amount by the monthly cost for services.

(b) A client who suffers undue hardship as a result of financial obligations for reasons such as a catastrophic illness of the client or a family member may request that his or her co-payment be reduced or waived. The provider agency must reduce or waive the amount of the client's co-payment if the contract manager approves his or her request. To request a reduction or waiver of a co-payment:

(1) the client must make the request of the assessor of need;

(2) the assessor of need must submit the request to the contract manager and recommend approval or non-approval; and

(3) the contract manager must advise the assessor of need of whether the client's request is approved.

(c) The provider agency must collect each co-payment from the client on or before the end of the month. If payment is not made by the end of the month, the provider agency must send notice to the client by the first working day of the following month. The provider agency may not charge a client a fee for late payment. The provider agency may suspend services to the client under §44.103 of this chapter (relating to What procedures must a provider agency follow to suspend and resume services?) for failure to pay a co-payment if the client has not paid the co-payment by the 20th day of the following month.

(d) In collecting monthly co-payments, a provider agency must:

(1) provide the client a receipt containing the client's name, the amount paid, and the date of the payment, and retain a copy of the receipt;

(2) deduct the co-payment from reimbursement claims submitted to the Department of Aging and Disability Services under §44.112 of this chapter (relating to How are provider agencies reimbursed?); and

(3) maintain a current client co-payment ledger system, in accordance with generally accepted accounting principles, that reflects all charges to and all payments by the client.

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 10, 2008.

TRD-200805885
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: December 1, 2008
Proposal publication date: August 1, 2008
For further information, please call: (512) 438-3734

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 of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 104 concerning General Provisions--Rulemaking. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules.

§104.1. Contents of Rule-Making Petitions.

Comments regarding whether the reason for adopting the rule continues to exist must be received by 5:00 p.m. on December 29, 2008 and submitted to Victoria Ortega, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200806042
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 19, 2008

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 180 concerning Monitoring and Enforcement. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules. At a later date, some or all of these rules may be repealed or amended.

SUBCHAPTER A - General Rules for Enforcement

§180.1. Definitions.

§180.2. Referrals.

§180.3. Compliance Audits.

§180.5. Access to Workers' Compensation Related Records.

§180.6. Evidence of Patterns of Practice.

§180.7. Date Violation Deemed to Have Occurred; Establishing Willful Violations.

§180.8. Notices of Violation, Warning Letters, and Notices of Intent.

§180.10. Duration and Extent of Noncompliance.

§180.11. Compliance Categories.

§180.12. Compliance Standards and Compliance Rates.

§180.13. Warning Letter Criteria; Relevant Time Period.

§180.14. General Provisions for Penalty Calculations.

§180.15. Base Penalties.

§180.16. Review Modifiers.

§180.17. Audit Modifiers.

§180.18. Applicability.

§180.19. Incentives.

SUBCHAPTER B - Medical Benefit Regulation

§180.20. Commission Approved Doctor List.

§180.21. Commission Designated Doctor List.

§180.22. Health Care Provider Roles and Responsibilities.

§180.23. Commission Required Training for Doctors/Certification Levels.

§180.24. Financial Disclosure.

§180.25. Improper Inducements, Influence and Threats.

§180.26. Doctor and Insurance Carrier Sanctions.

§180.27. Sanctions Process/Appeals/Restoration/Reinstatement.

§180.28. Peer Review Requirements, Reporting, and Sanctions.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on December 29, 2008 and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200806043
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 19, 2008

♦ ♦ ♦

Adopted Rule Review

Texas State Board of Public Accountancy

Title 22, Part 22

In accordance with Texas Government Code §2001.039 the Texas State Board of Public Accountancy (board) adopts the review of 22 Texas Administrative Code (TAC) Part 22, Chapters 501, 505, 507, 509, 511, 512, 513, 515, 517, 518, 519, 521, 523, 525, 526 and 527. The board published a Notice of Intention to Review these chapters in the June 22, 2007, issue of the *Texas Register* (32 TexReg 3859).

Texas Government Code §2001.039 requires that every agency review each of its rules to determine at a minimum whether the reason for the adoption of the rule continues to exist. In accordance with the provisions of Texas Government Code §2001.039 the board developed a list of questions and considerations it used to guide its rule review. These considerations included an analysis of whether each rule is needed for fair administration and just enforcement of the Public Accountancy Act (the Act) and whether the rule reflects current board policy and current legal interpretations of the Act.

As a result of conducting its review of these chapters, the board has proposed and/or adopted new rules, amendments to existing rules or the repeal of rules no longer needed. Each of the proposals and/or adoptions has been published in the *Texas Register* in accordance with the Administrative Procedure Act. The board finds that the reasons for adopting those rules for which no amendments or repeals have been proposed in the course of its review continue to exist.

No comments were received regarding adoption of the rule review.

This concludes the Board's review of Chapters 501, 505, 507, 509, 511, 512, 513, 515, 517, 518, 519, 521, 523, 525, 526 and 527.

TRD-200805990
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Filed: November 17, 2008

♦ ♦ ♦

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 §26.3(c)(2)(A)

Elementary Schools

Food or Beverage	**Portion Size**
Chips (baked or fried) must have no more than 7.5 grams of fat per bag.	1.5 ounces
Crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, jerky, and pretzels.	1.5 ounces
Cookies/cereal bars, bakery items (e.g., pastries, muffins.) This excludes items that count as two-bread components served/sold only at breakfast. Total fat: Not to exceed 30 percent of calories or contain no more than 3 grams per 100 calories; Saturated fat: Not to exceed 10 percent of calories or contain no more than 1 gram per 100 calories; Sugar: Contain no more 10 grams per ounce.	2 ounces cookies/cereal bars 3 ounces bakery items
Frozen desserts, ice cream, frozen yogurt, pudding, and gelatin.	4 fluid ounces (1/2 cup)
Yogurt.	8 fluid ounces (1 cup)
Whole milk, flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	8 fluid ounces (1 cup)
Reduced fat milk (2 percent or less), flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	16 fluid ounces (2 cups)
Non-carbonated, unflavored water.	No limit
Juices (100 percent fruit and/or vegetable juice) may contain no more than 30 grams total sugar per 6 fluid ounce serving.	6 fluid ounces (3/4 cup)
Frozen fruit slushes. (Must contain a minimum of 50 percent fruit juice.)	6 fluid ounces (3/4 cup)

Figure: 4 TAC §26.4(c)(2)(A)

Middle/Junior High Schools

Food or Beverage	Portion Size
Chips (baked or fried) must have no more than 7.5 grams of fat per bag.	1.5 ounces
Crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, jerky, and pretzels.	1.5 ounces
Cookies/cereal bars, bakery items (e.g., pastries, muffins.) This excludes items that count as two-bread components served/sold only at breakfast. Total fat: Not to exceed 30 percent of calories or contain no more than 3 grams per 100 calories; Saturated fat: Not to exceed 10 percent of calories or contain no more than 1 gram per 100 calories; Sugar: Contain no more 10 grams per ounce.	2 ounces cookies/cereal bars 3 ounces bakery items
Frozen desserts, ice cream, frozen yogurt, pudding, and gelatin.	4 fluid ounces (1/2 cup)
Yogurt.	8 fluid ounces (1 cup)
Whole milk, flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	8 fluid ounces (1 cup)
Reduced fat milk (2 percent or less), flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	16 fluid ounces (2 cups)
Beverages (other than milk) may contain no more than 30 grams total sugar per 8 fluid ounce serving. No limit on non-carbonated, unflavored bottled water.	12 fluid ounces (1 1/2 cups)
Frozen fruit slushes. (Must contain a minimum of 50 percent fruit juice.)	8 fluid ounces (1 cup)

Figure: 4 TAC §26.5(c)(2)(A)

High Schools

Food or Beverage	Portion Size
Chips (baked or fried) must have no more than 7.5 grams of fat per bag.	1.5 ounces
Crackers, popcorn, cereal, trail mix, nuts, seeds, dried fruit, jerky, and pretzels.	1.5 ounces
Cookies/cereal bars, bakery items (e.g., pastries, muffins.) This excludes items that count as two-bread components served/sold only at breakfast. Total fat: Not to exceed 30 percent of calories or contain no more than 3 grams per 100 calories; Saturated fat: Not to exceed 10 percent of calories or contain no more than 1 gram per 100 calories; Sugar: Contain no more 10 grams per ounce.	2 ounces cookies/cereal bars 3 ounces bakery items
Frozen desserts, ice cream, frozen yogurt, pudding, and gelatin.	4 fluid ounces (1/2 cup)
Yogurt.	8 fluid ounces (1 cup)
Whole milk, flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	8 fluid ounces (1 cup)
Reduced fat milk (2 percent or less), flavored or unflavored. (Flavored milks may contain no more than 30 grams total sugar per 8 fluid ounce serving.)	16 fluid ounces (2 cups)
Beverages (other than milk) and those restricted as FMNVs may contain no more than 30 grams total sugar per 8 fluid ounce serving. No limit on non-carbonated, unflavored bottled water.	12 fluid ounces (1 1/2 cups)
Candy bars and packaged candies.	1.5 ounces
Frozen fruit slushes. (Must contain a minimum of 50 percent fruit juice.)	12 fluid ounces (1 1/2 cups)

Figure: 4 TAC §45.2(a)

Multiple species diseases

Akabane - Akabane virus

Anthrax**- Bacillus anthracis

Aujeszky's disease - Pseudorabies virus, herpesvirus suis

Leishmaniasis** - Leishmania infantum and L donavani

Foot and mouth disease - Aphthovirus, types A,O,C, SAT, Asia

Heartwater - Cowdria ruminantium

African Trypanosomosis (Nagana) - Trypanosoma brucei, T. vivax,

T. brucei

Rinderpest - Morbillivirus

Rift Valley fever - Bunya virus

Vesicular stomatitis - Rhabdovirus; 2 serotypes; New Jersey and Indiana

Screwworm - Cochliomyia hominivorax

Cattle diseases (including Exotic Bovidae)

Bovine babesiosis - *B. bovis, B. divergens*, Babesia microti

Bovine brucellosis - Brucella abortus

Bovine ephemeral fever - Rhabdovirus

Bovine trichomonosis - trichomoniasis* ****

Bovine tuberculosis - Mycobacterium bovis

East coast fever (Theileriosis) - Theileria parva

Malignant catarrhal fever (wildebeest associated) - Alcelaphine

herpesvirus (AHV 1)

Contagious bovine pleuropneumonia - Mycoplasma mycoides

Lumpy skin disease - Neethling poxvirus

Bovine spongiform encephalopathy -

Scabies* - Sarcoptes scabiei, Psoroptes bovis, Chorioptes bovis

Cervidae

Brucellosis - Brucella abortus, Brucella suis (biotype 4)

Chronic Wasting Disease -

Tuberculosis - Mycobacterium bovis

Sheep and goat diseases

Caprine and ovine brucellosis (not B. ovis infection) - Brucella melitensis

Contagious caprine pleuropneumonia - Mycoplasma capri (biotype 78)

Louping ill - Flavovirus

Nairobi sheep disease - Bunyaviridae

Peste des petits ruminants - Morbillivirus, Paramyxoviridae family

Sheep pox and goat pox - Capripoxvirus

Scrapie -

Scabies* - Sarcoptes scabiei

Equine diseases

African horse sickness - Orbivirus

Contagious equine metritis - Tayorella equigenitalis

Dourine - Trypanosoma equiperdum

Epizootic lymphangitis - Histoplasma farciminosum

Equine encephalomyelitis (Eastern and Western)** - Alphavirus

Equine infectious anemia - Lentivirus

Equine morbillivirus pneumonia - Morbillivirus

Equine piroplasmosis - Babesia equi, B. caballi

Glanders - Pseudomonas mallei

Japanese encephalitis - Flavovirus

Surra - Trypanosoma evansi

Venezuelan equine encephalomyelitis** - Alphavirus; Togaviridae family

Equine Viral Arteritis (EVA)* ***

Equine Herpes Virus-1 (EHV-1)*

Swine diseases

African swine fever - Poxvirus

Classical swine fever (hog cholera) - Togovirus

Pseudorabies - Herpesvirus suis

Porcine brucellosis - Brucella suis

Swine vesicular disease - Picornavirus

Vesicular Exanthema - Calicivirus

Poultry diseases

Avian influenza - Orthomyxoviruse

Avian infectious laryngotracheitis - Orthomyxovirus, herpesvirus

Avian tuberculosis - Mycobacterium avium serovars 1,2

Duck virus hepatitis - Picornavirus

Duck virus enteritis - Herpesvirus

Fowl typhoid - Salmonella gallinarum

Highly pathogenic avian influenza (fowl plague) - Orthomyxovirus (type H5 or H7)

Infectious encephalomyelitis - Arbovirus

Ornithosis (psitticosis) - Chlamydia psittaci

Pullorum disease - Salmonella pullorum

Newcastle disease (VVND) - Paramyxovirus-1 (PMV-1)

Paramyxovirus infections (other than Newcastle disease) - PMV-2 to PMV-9

Rabbit diseases

Myxomatosis - Myxomatosis virus

Viral haemorrhagic disease of rabbits - Calciviral disease

* These diseases will only be reportable through the last day of the 81st Texas Legislative Session unless continued in effect by act of the legislature.

** These diseases are also reportable to the Department of State Health Services (DSHS)

*** This disease has reporting standards in Chapter 49, §49.4 of this title (relating to Equine Viral Arteritis (EVA) Reporting and Handling for Breeding of Infected Equine).

**** Results of tests for this disease shall be reported within 48 hours of completion of the tests.

Figure: 10 TAC §53.31(j)

AMFI	**Rehabilitation or Reconstruction**
≤30% AMFI	0% interest, 5-year deferred, forgivable Loan.
>30% and ≤50% AMFI	0% interest, 15- year deferred, forgivable Loan.
>50% and ≤60% AMFI	0% interest, 20-year deferred, forgivable Loan.
>60% and ≤80% AMFI	0% interest, 20-year term repayable Loan.

Figure: 10 TAC §53.85(a)(6)

OCC and HBA with Rehabilitation	Reconstruction	Rehabilitation
Project Soft or Administrative Cost per ACTIVITY		
Application intake and processing	$600	$600
Credit Report	$50	$50
Construction and disbursement documentation preparation	$250	$250
Environmental review	$400	$400
Exempt administrative environmental	$50	$50
Final inspection	$300	$300
Information services	$400	$400
Initial inspection	$500	$500
Procurement of contractor	$300	$300
Progress inspections (up to 7 at $300 max each, minimum of 4 required)[1]	$2,100	$2,100
Pre-construction conference	$300	$300
Project document preparation	$100	$100
Punch list verification inspection	$300	$300
Schedule of values	$100	$100
Work write-up	N/A	$500[2]
Work write-up summary/cost estimate	$400[2]	$400[2]
Administrative Cost Only per CONTRACT		
Affirmative marketing plan	$200	$200
Financial management	$200	$200
Procurement of professional service provider	$300	$300
Recordkeeping	$800	$800
Project Soft Cost Only per ACTIVITY		
Plans (market value)	N/A	$200
Plans and specification manual (market value)	$700[2]	N/A
Specification manual	N/A	$200

[1] A maximum of two (2) progress inspections are allowed when a housing unit is replaced with an MHU.

[2] Work write-up, Work write-up summary/cost estimate, plans and specifications are not allowable costs when a housing unit is replaced with an MHU.

HBA	
Project Soft or Administrative Cost per ACTIVITY	
Application intake and processing	$600
Preparation of loan documents	$100
Environmental Review	$400
Exempt administrative environmental	$50
Information services	$200
Project document preparation	$100
Property Inspection	$350
Schedule of values	$100
Administrative Cost Only per CONTRACT	
Affirmative marketing plan	$200
Financial management	$200
Procurement of professional service provider	$300
Recordkeeping	$800
Project Soft Cost Only per ACTIVITY	
Credit Report	$50
Homebuyer Counseling	$300

Figure: 10 TAC §60.121(k)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs [~~HTC~~ ~~Bonds~~ ~~HOME~~ ~~HTF~~ ~~CDBG~~]	Yes
Pattern of minor property condition violations	10	5	All programs [~~HTC~~ ~~Bonds~~ ~~HOME~~ ~~HTF~~ ~~CDBG~~]	Yes
Administrative reporting of property condition violations	0	0	HTC [~~Bonds~~ ~~HOME~~ ~~HTF~~ ~~CDBG~~]	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §60.112	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §60.112 of this chapter	10 [~~3~~]	3 [~~1~~]	See §60.112	No
Development failed to comply with requirements limiting minimum income standards for §8 residents.	10	3	See §60.112	No
Development is not available to general public	10	0	HTC	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/ Foreclosure	Material Noncompliance	NA/No correction possible	All programs [~~program~~]	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs [~~HTC Home HTF Bonds~~]	No

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs [~~HTC~~ ~~Bonds~~ ~~HOME~~ ~~HTF~~ ~~CDBG~~]	No
Failure to provide special needs housing	10	3	All programs [~~HTC~~ ~~Bonds~~ ~~HOME~~ ~~HTF~~ ~~CDBG~~]	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10 [~~5~~]	All programs [~~HTC~~ ~~Bonds~~ ~~HOME~~ ~~HTF~~ ~~CDBG~~]	Yes
[~~Failure to comply with the Next Available Qualifying Unit Rule~~]	[~~3~~]	[~~1~~]	[~~AHP~~]	[~~Na~~]

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Owner failed to execute required lease provisions, including language required by §60.110 or exclude prohibited lease language	10 [~~3~~]	3 [~~1~~]	HTC HOME	No
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §1.37 of this title	Material Noncompliance	10	HTC	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10 [4]	3 [~~0~~]	HTC	No
Change in Ownership [~~ownership~~] or General Partner without proper notification to and approval of Department	10 [4]	3 [~~0~~]	All programs	No
Failure to provide a notary public as promised at Application	10 [~~5~~]	3 [~~1~~]	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes

Figure: 10 TAC §60.121(l)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form [~~form~~] 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds HOME HTF [~~AHP~~]	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification [~~Qualifying Unit designation removed from household~~]	3	1	All programs [~~AHP~~]	No [~~NA~~]

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form [~~form~~] 8823?
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC HOME	Yes
Household income increased above 80% at recertification and Owner [~~owner~~] failed to properly determine rent	3	1	HOME	NA

Figure: 19 TAC §5.9

Numerical Grade	AP/IB/Dual Credit GPA	Pre-AP Pre-IB Honors GPA	Regular Course GPA	Letter Grade
100	5.0	4.5	4.0	A+
99	4.9	4.4	3.9	A+
98	4.8	4.3	3.8	A+
97	4.7	4.2	3.7	A
96	4.6	4.1	3.6	A
95	4.5	4.0	3.5	A
94	4.4	3.9	3.4	A -
93	4.3	3.8	3.3	A -
92	4.2	3.7	3.2	A -
91	4.1	3.6	3.1	B +
90	4.0	3.5	3.0	B +
89	3.9	3.4	2.9	B +
88	3.8	3.3	2.8	B
87	3.7	3.2	2.7	B
86	3.6	3.1	2.6	B
85	3.5	3.0	2.5	B
84	3.4	2.9	2.4	B -
83	3.3	2.8	2.3	B -
82	3.2	2.7	2.2	B -
81	3.1	2.6	2.1	C +
80	3.0	2.5	2.0	C +
79	2.9	2.4	1.9	C +
78	2.8	2.3	1.8	C
77	2.7	2.2	1.7	C
76	2.6	2.1	1.6	C
75	2.5	2.0	1.5	C
74	2.4	1.9	1.4	C -
73	2.3	1.8	1.3	C -
72	2.2	1.7	1.2	C -
71	2.1	1.6	1.1	D +
70	2.0	1.5	1.0	D +

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

Notice of Settlement of a Texas Solid Waste Disposal Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. Before the State may settle a judicial enforcement action, pursuant to 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 Act.

Case Title and Court: *Settlement Agreement in Harris County, Texas and State of Texas v. Richard Lance Bowe, et al.,* Cause No. 2005-61637, 281st Judicial District of Harris County.

Background: This suit alleges violations of the Texas Solid Waste Disposal Act at a property in Harris County, Texas. The defendants are PK B Interests, Ltd., Richard Lance Bowe, Mulch Matters, Inc., and Prime Trees, Inc. The suit seeks injunctive relief, civil penalties, and attorney's fees. The Solid Waste Disposal Act violations are for storage and disposal of wood waste without a municipal solid waste permit.

Nature of Settlement: The settlement awards the State $11,000.00 and Harris County $11,000.00 in civil penalties and awards $8,000.00 in attorney's fees to the State and $10,000.00 in attorney's fees to Harris County. The settlement also awards injunctive relief.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200806047
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 19, 2008

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 Texas Administrative Code (TAC) Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 7, 2008, through November 13, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 19, 2008. The public comment period for this project will close at 5:00 p.m. on December 19, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Lafitte's Harbor Development, LP; Location: The project is located at Lake Como, Marina at Waterman Restaurant, 14302 Stewart Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate Latitude/Longitude Coordinates NAD 83: 29.2076N, -94.9495W. Project Description: The applicant proposes to upgrade an existing marina consisting of approximately 40 boat slips to 5 covered boat sheds containing 104 boat slips while keeping an existing fuel facility and bulkhead. The footprint of the project would be approximately 73,000 square feet (1.68 acres). No dredging or fill is proposed. No wetlands will be impacted. CCC Project No.: 09-0016-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00226 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Galveston Bay Foundation; Location: The project is located in the northwest side of Burnet Bay, adjacent to Crosby-Lynchburg Road, near Baytown, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Highlands, Texas. Approximate UTM Coordinates in NAD 83: Zone 15; Easting: 985983; Northing: 10811584, Lat/Long in NAD 83: 29.7726, -95.0632. Project Description: The applicant proposes to construct earthen berms and place dredge material as habitat mounds in the northwest section of Burnet Bay. Approximately 3,000 linear feet of earthen berm would be constructed utilizing onsite material that would be sidecast to create the berms. Construction of the berms would require approximately 25,400 cubic yards to be excavated. Approximately 162,000 cubic yards of sandy dredged material from an area immediately adjacent to the project site would be placed to form the habitat mounds. The area would then be planted as part of Galveston Bay Foundation volunteer events at later dates to promote healthy marsh growth. CCC Project No.: 09-0017-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00127 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located on Sabine Lake, at State Tract (ST) 7, Well No.1 approximately 2.17 miles west of the Texas-Louisiana border, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map en-

titled: West of Greens Bayou, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 417976; Northing: 3313548. Project Description: The applicant proposes to drill ST 7, Well No.1. This also includes the installation and maintenance of a well platform, production platform, and flowline from well to production platform. Additionally, a 6-inch diameter pipeline will be installed from said platform in a southeasterly direction approximately 4,227 feet to a pipeline in ST 8. Flowline will be buried 3 feet below the mudline. CCC Project No.: 09-0021-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00534 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located on Sabine Lake, in State Tract (ST) 15, Well No.1, ST 20, Well No.1, ST 21, Well No.1, and ST 24, Well No.1, approximately 2 miles west of the Texas-Louisiana border, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: West of Greens Bayou, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 416339; Northing: 3309651. Project Description: The applicant proposes to drill ST 15, Well No.1. This also includes the installation and maintenance of well platforms, production platforms and flowlines from wells to production platforms. Additionally, a 6-inch diameter pipeline will be installed from said platform to an existing pipeline. CCC Project No.: 09-0022-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00535 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located on Sabine Lake State Lease (SL) 19438 Wells No. 1 & 2 approximately 2 miles east of Texas-Louisiana border, in Cameron Parish, Louisiana. The project can be located on the U.S.G.S. quadrangle map entitled: West of Greens Bayou, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 423366; Northing: 3309816. Project Description: The applicant proposes to drill SL 19438, Well No.1. This also includes the installation and maintenance of well platforms, production platforms and flowlines from wells to production platforms. Additionally, a 6-inch diameter pipeline will be installed from said platform. CCC Project No.: 09-0023-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00611 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: William H. Atwell II; Location: The project is located at 610 Private Road A, in Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 691900; Northing: 3080950. Project Description: The applicant proposes to place fill into an existing boat slip located off a canal adjacent to the Corpus Christi Ship Channel. The existing boat slip measures 42.4 feet in length and 20.6 feet in width. An 18-foot-long by 24-inch wide bulkhead would be installed across the opening of the slip and then 117 cubic yards of fill would be placed below the high tide line (HTL). Current depths of the slip vary from -6 feet (HTL) at the opening to the canal to -3 feet HTL at the back of the slip. An additional 85 cubic yards of material would be placed to bring the elevation of the filled slip to the surrounding elevation. According to the agent the slip does not contain wetlands or special aquatic sites. CCC Project No.: 09-0031-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00987 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Suemaur Exploration and Production, LLC; Location: The project is located approximately 17.4 miles southeasterly from Winnie, on the western edge of the High Island Oil and Gas Field, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: High Island, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 363015.749; Northing: 3271824.107. Project Description: The applicant proposes to impact approximately 4.7 acres of herbaceous wetlands during the construction of a drill site and tank battery. The applicant is proposing to conduct drilling and production activities to develop oil and gas reserves underlying private property in Galveston County. The applicant proposes to construct a boarded drill site and bermed tank battery location. While the drilling operations are active, the drill site will occupy a footprint of approximately 3.7 acres and will be 400 by 400 feet in size. The applicant will use a lined berm and borrow ditch around the drill site for containment. If the well is successful, the temporary board pad will be replaced with one constructed of compacted clay, sand and gravel. The permanent pad may be raised as much as 12 to 18 inches from the ground surface. The tank battery will occupy a footprint of approximately one acre and will be 300 by 150 feet in size. The applicant will use a lined berm and borrow ditch around the tank battery for containment. The pad for the tank battery will be constructed of limestone fill.

To compensate for impacts resulting from the proposed drill site and tank battery, the applicant will establish compensatory mitigation at the Coastal Plains Wetland Mitigation Bank site based on habitat values calculated using the hydro-geomorphic method. The applicant has stated that permanent impacts cannot be calculated at this time because success of the well is unknown; however, permanent impacts will not exceed the proposed impacts (+/- 4.7 acres). In the event of an unsuccessful well, boards would be removed, pre-project contours established and the area would be left to naturally revegetate. CCC Project No.: 09-0032-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00266 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Suemaur Exploration and Production, LLC; Location: The project is located approximately 17.4 miles southeasterly from Winnie on the northern edge of the High Island Oil and Gas Field in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: High Island, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 365140.474; Northing: 3271824.107. Project Description: The applicant proposes to impact approximately 2.7 acres of herbaceous wetlands during the construction of a drill site, access road and Central Gas Sales Facility and temporarily impact 1.9 acres of herbaceous wetlands during the installation of a pipeline. The applicant is proposing to conduct drilling and production activities to develop oil and gas reserves underlying private property in Galveston County. The applicant proposes to construct a boarded drill site, boarded access road, bermed Central Gas Sales Facility and approximately 9,584 feet of 10-inch pipeline. This pipeline would connect the proposed drill site on the coast with the proposed Central Gas Sales Facility, which is associated with Application Number SWG-2008-00266. The pipeline will follow existing roads to connect the Central Gas Facility with the drill site. From Northeast Oilfield Road, a boarded road will be constructed for a distance of 561 feet with

a width of 30 feet to the proposed drill site. While the drilling operations are active, the drill site will occupy a footprint of approximately 3.1 acres and will be 300 by 450 feet in size. The applicant will use a lined berm and borrow ditch around the drill site for containment. If the well is successful, the temporary board pad will be replaced with one constructed of compacted clay, sand and gravel. These materials will be stabilized as required with a cement additive. The permanent pad may be raised as much as 12 to 18 inches from the ground surface. The Central Gas Sales Facility will occupy a footprint of approximately 0.3 acres and will be 100 by 150 feet in size. The applicant will use a lined berm and borrow ditch around the Central Gas Sales Facility for containment. The pad for the Central Gas Sales Facility will be constructed of limestone fill. Pipeline trenches will be double-ditched; the top 6 inches of soil will be placed separately from soil excavated at a depth greater than 6 inches and used for backfill. Pre-project contours will be established and the topsoil will be restored on top to facilitate the natural revegetation of the pipeline location. All restoration of these temporary impacts would be completed within 180 days of the beginning of work in jurisdictional areas.

To compensate for impacts resulting from the proposed drill site, access road and Central Gas Sales Facility, the applicant will establish compensatory mitigation at the Coastal Plains Wetland Mitigation site based on habitat values calculated using the hydro-geomorphic method. The applicant has stated that permanent impacts cannot be calculated at this time because success of the well is unknown; however, permanent impacts will not exceed the proposed impacts (+/- 4.7 acres). In the event of an unsuccessful well, boards would be removed, pre-project contours established and the area would be left to naturally revegetate. CCC Project No.: 09-0034-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00267 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Sandalwood Oil and Gas, LP; Location: The project is located adjacent to Carancahua Bayou, southeast of the intersection of FM 2004 and FM 646, on Hall's Bayou Ranch, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Hitchcock, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 301049; Northing: 3241115. Project Description: The proposed project was initially coordinated via a Public Notice on 23 July 2008. Since that date, the applicant has changed the proposed mitigation plan. The revised mitigation plan is similar in nature to the previously coordinated mitigation plan; however this mitigation plan is in a different location. There were no changes on the proposed site development plan. The applicant proposes to place fill material and/or wooden mats or boards onto 1.18 acres of wetlands to construct a drilling pad, an access road and a production facility in order to drill for, and produce, petroleum resources. If the well is productive, the applicant will reduce the size of the work space to 0.53-acre production facility.

To compensate for the permanent impacts to wetlands, the applicant proposes to create approximately 0.53 acre of wetlands approximately 0.90 mile east of the proposed project area. The mitigation site is an abandoned petroleum pad and access road. Approximately 0.53 acres of uplands will be excavated to 1 to 1.5 feet below the existing grade. Prior to mitigation site construction, elevations of target species will be verified onsite. Following a sediment conditioning period, the excavated area will be planted on three-foot centers with Salicornia virginica, Borrichia frutescens, Spartina spartinae and associated species. CCC Project No.: 09-0036-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01447 Rev. is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200806012
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 18, 2008

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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/17/08 - 11/23/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/17/08 - 11/23/08 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200805914
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 12, 2008

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, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/24/08 - 11/30/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/24/08 - 11/30/08 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/08 - 12/31/08 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/08 - 12/31/08 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200806013
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 18, 2008

Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following applications has been filed with the Credit Union Department and is under consideration:

An application was received from East Texas Professional Credit Union (Longview) seeking approval to merge with Rusk County Teachers Federal Credit Union (Henderson), with East Texas Professional Credit Union being the surviving credit union.

An application was received from Workforce Credit Union (Fort Worth) seeking approval to merge with Tarrant County Credit Union (Fort Worth), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200806039
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2008

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Energy Capital Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school, and businesses and other legal entities located in Harris County, Texas or a ten mile radius of the following Energy Capital Credit Union office locations: 800 Bell Street, Houston, TX; 3120 Buffalo Speedway, Houston, TX; 4500 Dacoma, Houston, TX; 233 Benmar, Houston, TX; 13501 Katy Freeway, Houston, TX; 396 W. Greens Road, Houston, TX; and 18540 Northwest Freeway, Houston, TX, to be eligible for membership in the credit union.

An application was received from Unity One Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school within a ten mile radius of the following Unity One Credit Union locations: 6701 Burlington Blvd., Fort Worth, TX 76131; 4625 North Tarrant Parkway, Fort Worth, TX 76248; 2625 North Main St., Fort Worth, TX 76164; and 380 Jackson St., St. Paul, MN 55101, 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-200806038
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2008

Notice of Final Action Taken

In accordance with the provisions of 7 Texas Administrative Code (TAC) §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

West Texas Educators Credit Union, Odessa, Texas - See *Texas Register* issue dated August 29, 2008.

Texas Dow Employees Credit Union (#1), Lake Jackson, Texas - See *Texas Register* issue dated August 29, 2008

First Service Credit Union, Houston, Texas - See *Texas Register* issue dated September 26, 2008.

Applications for a Merger or Consolidation - Approved

Union Pacific & Transportation Employees Federal Credit Union (Dallas) and Texas Telcom Credit Union (Dallas) - See *Texas Register* issue dated June 27, 2008.

Articles of Incorporation - New Charter Approved

NCI Community Development Credit Union, Houston, Texas. Persons who live, work, worship or attends school in the following U.S. Postal Service Zip Codes: 77036, 77074, and 77081; Employees of Neighborhood Centers, Inc. (NCI), the sponsoring company; and members of the family of such persons.

TRD-200806040
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 19, 2008

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th

day before the date on which the public comment period closes, which in this case is **December 29, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 29, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 3AR INC dba Quick Way; DOCKET NUMBER: 2008-1036-PST-E; IDENTIFIER: RN101573665; LOCATION: Euless, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §334.49(b)(2) and the Code, §26.3475(d), by failing to provide corrosion protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner that will detect a release; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.51(b)(2)(B) and the Code, §26.3475(c)(2), by failing to have a liquid-tight spill container on the diesel tank; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.45(e)(2)(D), by failing to equip all fill pipes in a new UST system with a removable or permanent factory-constructed drop tube which shall extend to within 12 inches of the tank bottom; 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to onboard refueling vapor recovery compatible systems; and 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; PENALTY: $24,962; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: 1977 Kindred II, L.P.; DOCKET NUMBER: 2008-1183-MWD-E; IDENTIFIER: RN101522522; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §126.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Harlie G. Adams; DOCKET NUMBER: 2008-1689-WOC-E; IDENTIFIER: RN103233789; LOCATION: Bledsoe, Cochran County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2008-1123-AIR-E; IDENTIFIER: RN100224377; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: underground hydrocarbon storage plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 2129, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $5,250; Supplemental Environmental Project (SEP) offset amount of $2,100 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Harris County Municipal Utility District Number 82; DOCKET NUMBER: 2008-0869-MWD-E; IDENTIFIER: RN102183696; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011799001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for total ammonia nitrogen; PENALTY: $3,525; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Hood Flexible Packaging Corporation; DOCKET NUMBER: 2008-1273-AIR-E; IDENTIFIER: RN100218361; LOCATION: Tyler, Smith County; TYPE OF FACILITY: packaging plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(B) and (C), and 122.146(1) and (2), Federal Operating Permit (FOP) Number O-02302, General Terms and Conditions, and THSC, §382.085(b), by failing to submit an annual permit compliance certification (PCC) and semi-annual deviation reports; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Syed N. Hyder; DOCKET NUMBER: 2008-1141-MWD-E; IDENTIFIER: RN102097789; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011778001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for biochemical oxygen demand, total suspended solids, and flow; and 30 TAC §305.125(1) and §319.5(b) and TPDES Permit Number WQ0011778001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples for dissolved

oxygen; PENALTY: $43,993; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Johnson County Pipe, Inc.; DOCKET NUMBER: 2008-1342-AIR-E; IDENTIFIER: RN103900858; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: polymer pipe manufacturing plant; RULE VIOLATED: 30 TAC §122.146(1) and (2) and THSC, §382.085(b), by failing to submit an annual PCC for FOP Number O-02868; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Carlie Konkel, (361) 825-3422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Pasha Sajjad dba King Food Citgo; DOCKET NUMBER: 2008-1184-PST-E; IDENTIFIER: RN101804441; LOCATION: Kingwood, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $2,350; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Mansfield Plumbing Products LLC; DOCKET NUMBER: 2008-1291-AIR-E; IDENTIFIER: RN100217041; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: plumbing materials production company; RULE VIOLATED: 30 TAC §101.10(e) and THSC, §382.085(b), by failing to submit a 2007 emissions inventory; PENALTY: $1,050; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Mike L. Mayfield; DOCKET NUMBER: 2008-1698-WOC-E; IDENTIFIER: RN103442950; LOCATION: Bowie, Montague County; TYPE OF FACILITY: installer; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: New West Construction, LLC; DOCKET NUMBER: 2008-1106-WQ-E; IDENTIFIER: RN105509194; LOCATION: Palmer, Ellis County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $5,113; ENFORCEMENT COORDINATOR: Mark Oliver, (512) 239-3308; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Tommy Raper; DOCKET NUMBER: 2008-1694-WOC-E; IDENTIFIER: RN105098180; LOCATION: Moore County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: City of Riesel; DOCKET NUMBER: 2008-1243-MWD-E; IDENTIFIER: RN101920635; LOCATION: Riesel, McLennan County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number 11015001, Special Provisions Number 4, by failing to manage irrigation practices so as to prevent ponding of effluent and the occurance of nuisance conditions; and 30 TAC §305.125(1), TPDES Permit Number 11015001, Standard Provisions Number 2.b., and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of any wastewater; PENALTY: $1,950; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Saint-Gobain Ceramics & Plastics, Inc.; DOCKET NUMBER: 2008-1313-AIR-E; IDENTIFIER: RN100213859; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: ceramics manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $2,475; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Antonio T. Scolley; DOCKET NUMBER: 2008-1693-WOC-E; IDENTIFIER: RN103680559; LOCATION: Muleshoe, Bailey County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: Southland Contracting Inc; DOCKET NUMBER: 2008-1690-WQ-E; IDENTIFIER: RN105625800; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: TexSand Distributors, LP; DOCKET NUMBER: 2008-1261-AIR-E; IDENTIFIER: RN105472401 and RN102744166; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: sand distribution plants; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; and 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain permit authorization prior to operating plant one and two; PENALTY: $7,020; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2008-1341-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 39142, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,800; SEP offset amount of $3,920 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Vopak Terminal Deer Park, Inc.; DOCKET NUMBER: 2008-1205-AIR-E; IDENTIFIER: RN100225093; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical storage terminal; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 466A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $11,200; SEP offset amount of $4,480 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200806014

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 18, 2008

Enforcement Orders

An agreed order was entered regarding Formosa Plastics Corporation, Texas, Docket No. 2006-0429-AIR-E on November 10, 2008 assessing $121,443 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Opel Business, Inc. dba Garth Road Cleaners aka Garth Road 1.69 Cleaners and dba 1.69 City Cleaners, Docket No. 2006-1365-DCL-E on November 10, 2008 assessing $2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Cleaning Stop, LLC dba Crystal Cleaners, Docket No. 2006-1400-DCL-E on November 10, 2008 assessing $270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-5846, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Yung Chea Edney aka Yung Chea dba K Dry Cleaners, Docket No. 2006-1505-DCL-E on November 10, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nhung T. Nguyen dba Anna's Cleaners & Alterations, Docket No. 2006-1675-DCL-E on November 10, 2008 assessing $1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0060, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David P. Derdeyn, Docket No. 2007-0848-WOC-E on November 10, 2008 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham Richard, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tom Jordan dba T. Jordan Conoco, Docket No. 2007-1250-PST-E on November 10, 2008 assessing $4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyler County, Docket No. 2007-1355-MSW-E on November 10, 2008 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bob Covington, Docket No. 2007-1384-WOC-E on November 10, 2008 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jochum Schievink dba Jochum Schievink Dairy, Docket No. 2007-1459-AGR-E on November 10, 2008 assessing $2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Granados, Docket No. 2007-1541-MSW-E on November 10, 2008 assessing $7,500 in administrative penalties with $3,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-1545-AIR-E on November 10, 2008 assessing $5,382 in administrative penalties with $1,076 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Firestone Polymers, LLC, Docket No. 2007-1598-AIR-E on November 10, 2008 assessing $66,871 in administrative penalties with $13,374 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Henrietta, Docket No. 2007-1625-MWD-E on November 10, 2008 assessing $18,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Chantron Patrick Tes dba Texas Spirit Liquor Store, Docket No. 2007-1639-PST-E on November 10, 2008 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Safety Railway Service, L.P., Docket No. 2007-1662-AIR-E on November 10, 2008 assessing $12,000 in administrative penalties with $2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Joe Lee Adams, Docket No. 2007-1687-MLM-E on November 10, 2008 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Village of Wimberley and Guadalupe Blanco River Authority, Docket No. 2007-1712-MWD-E on November 10, 2008 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pasadena Investment Group Corporation, Docket No. 2007-1822-PST-E on November 10, 2008 assessing $24,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Consolidated Water Supply Corporation, Docket No. 2008-0046-PWS-E on November 10, 2008 assessing $16,965 in administrative penalties with $3,391 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Corpus Christi, Docket No. 2008-0051-MSW-E on November 10, 2008 assessing $5,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quail Oak Property Owners Association, Docket No. 2008-0166-MLM-E on November 10, 2008 assessing $2,035 in administrative penalties with $407 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Apache Disposal, Inc., Docket No. 2008-0272-MLM-E on November 10, 2008 assessing $5,200 in administrative penalties with $1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP and Shell Oil Company, Docket No. 2008-0283-AIR-E on November 10, 2008 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Willie Garza dba The Man Shop Cleaners & Tuxedo Rental, Docket No. 2008-0393-MLM-E on November 10, 2008 assessing $8,020 in administrative penalties with $1,604 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Whitney Resorts, LLC and Paul S. Bissing, Docket No. 2008-0440-MLM-E on November 10, 2008 assessing $14,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Interstate Southwest, Ltd., Docket No. 2008-0452-PWS-E on November 10, 2008 assessing $1,777 in administrative penalties with $355 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Armstrong Hardwood Flooring Company, Docket No. 2008-0456-AIR-E on November 10, 2008 assessing $46,075 in administrative penalties with $9,215 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 Hill-Lake Gas Storage, L.P., Docket No. 2008-0479-AIR-E on November 10, 2008 assessing $94,950 in administrative penalties with $18,990 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kleberg County, Docket No. 2008-0481-MLM-E on November 10, 2008 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 1403, Inc. dba On The Move 9, Docket No. 2008-0488-PST-E on November 10, 2008 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2008-0497-AIR-E on November 10, 2008 assessing $7,950 in administrative penalties with $1,590 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ty Osmani dba Lucky Stop 2, Lucky Stop 4, and Lucky Stop 9, Docket No. 2008-0500-PST-E on November 10, 2008 assessing $33,428 in administrative penalties with $6,684 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kirvin, Docket No. 2008-0528-PWS-E on November 10, 2008 assessing $3,114 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Muniz and Emma Muniz, Docket No. 2008-0529-WQ-E on November 10, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brijinder Mohan dba S S Mart, Docket No. 2008-0543-PST-E on November 10, 2008 assessing $8,670 in administrative penalties with $1,734 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BUCKY'S NAVIGATION, INC. dba Corpus Christi Truck Stop, Docket No. 2008-0545-PST-E on November 10, 2008 assessing $12,315 in administrative penalties with $2,463 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Feron Corporation dba Zebra Show Bar, Docket No. 2008-0546-PWS-E on November 10, 2008 assessing $7,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2008-0568-AIR-E on November 10, 2008 assessing $25,850 in administrative penalties with $5,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2008-0575-AIR-E on November 10, 2008 assessing $250,753 in administrative penalties with $50,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownfield Farmers, L.L.C., Docket No. 2008-0582-AIR-E on November 10, 2008 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Butler Water Supply Corporation, Docket No. 2008-0601-PWS-E on November 10, 2008 assessing $5,163 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arrow Marble L.L.C., Docket No. 2008-0645-AIR-E on November 10, 2008 assessing $20,250 in administrative penalties with $4,050 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 Petroleum Wholesale, L.P. dba Sunmart 476, Docket No. 2008-0670-PST-E on November 10, 2008 assessing $5,816 in administrative penalties with $1,163 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2008-0681-AIR-E on November 10, 2008 assessing $7,384 in administrative penalties with $1,476 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M-I L.L.C. dba M-I SWACO, Docket No. 2008-0707-AIR-E on November 10, 2008 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Business Network Inc, dba Country Store 2, Docket No. 2008-0725-PST-E on November 10, 2008 assessing $2,200 in administrative penalties with $440 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2008-0726-AIR-E on November 10, 2008 assessing $15,496 in administrative penalties with $3,099 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANH P. BROWN CORPORATION dba The Convenient Store, Docket No. 2008-0739-MLM-E on November 10, 2008 assessing $12,500 in administrative penalties with $2,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Us Department of the Army, Docket No. 2008-0757-AIR-E on November 10, 2008 assessing $4,750 in administrative penalties with $950 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 Tommy Manion of Texas, Inc., Docket No. 2008-0773-AGR-E on November 10, 2008 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding East Cedar Creek Fresh Water Supply District, Docket No. 2008-0786-MWD-E on November 10, 2008 assessing $5,370 in administrative penalties with $1,074 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2008-0792-AIR-E on November 10, 2008 assessing $3,874 in administrative penalties with $774 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Williamson Printing Corporation, Docket No. 2008-0798-AIR-E on November 10, 2008 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2008-0800-AIR-E on November 10, 2008 assessing $17,400 in administrative penalties with $3,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MURPHY OIL USA, INC. dba Murphy USA 5708, Docket No. 2008-0816-PST-E on November 10, 2008 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerardo Romero dba Sol Y Mar, Docket No. 2008-0848-PWS-E on November 10, 2008 assessing $2,850 in administrative penalties with $570 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UMER INTERNATIONAL, INC. dba Ellington Food Store, Docket No. 2008-0892-PST-E on November 10, 2008 assessing $950 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Montgomery County Municipal Utility District No. 24, Docket No. 2008-0896-MWD-E on November 10, 2008 assessing $1,400 in administrative penalties with $280 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Copano Processing, L.P., Docket No. 2008-0911-AIR-E on November 10, 2008 assessing $6,250 in administrative penalties with $1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clearstream Wastewater Systems, Incorporated, Docket No. 2008-0930-AIR-E on November 10, 2008 assessing $4,750 in administrative penalties with $950 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thelma Hall dba Thelma Hall Dairy, Docket No. 2008-0931-AGR-E on November 10, 2008 assessing $23,400 in administrative penalties with $4,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Certainteed Corporation, Docket No. 2008-0956-AIR-E on November 10, 2008 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Currey Decatur Truckstop, Inc. dba Currey Decatur Truckstop, Docket No. 2008-0959-PST-E on November 10, 2008 assessing $11,096 in administrative penalties with $2,219 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyle Murphey dba Highway 71 Storage & Mobile Home Park, Docket No. 2008-1006-PWS-E on November 10, 2008 assessing $1,015 in administrative penalties with $203 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Granger, Docket No. 2008-1017-PWS-E on November 10, 2008 assessing $525 in administrative penalties with $105 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Normangee, Docket No. 2008-1362-MWD-E on November 10, 2008 assessing $44,315 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Vidal Trejo, Docket No. 2008-1324-OSI-E on November 10, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Charles K. Clarkson, Docket No. 2008-1331-WOC-E on November 10, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Thurman Woodle Investments, LLC, Docket No. 2008-1345-WQ-E on November 10, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Michael Eugene French, Docket No. 2006-2022-MSW-E on November 13, 2008 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200806050
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 19, 2008

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 29, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 29, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: CKN, Inc. dba Corner Food Mart; DOCKET NUMBER: 2008-0820-PST-E; TCEQ ID NUMBER: RN101499762; LOCATION: 531 West San Antonio Street, Lockhart, Caldwell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(C), by failing to submit an underground storage tank (UST) registration and self-certification form to the TCEQ no later than 30 days after the date of ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $1,125; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE:

Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: David Hughitt dba Hughitt Tire Disposal; DOCKET NUMBER: 2003-0081-MSW-E; TCEQ ID NUMBER: RN102805652; LOCATION: Farm-to-Market Road 219, Hico, Hamilton County; TYPE OF FACILITY: scrap tire transportation operation; RULES VIOLATED: 30 TAC §§328.60(a), 328.63(c), 328.59(a) and Texas Health and Safety Code (THSC), §361.112, by failing to obtain a scrap tire storage registration prior to storing more than 500 used and/or scrap tires at the facility; 30 TAC §328.54(d), by failing to identify the vehicle used to transport used and/or scrap tires; 30 TAC §328.57(d), by failing to retain all work orders and invoices showing the collection and disposition of all used and scrap tires and pieces for a three year period; 30 TAC §328.57(e), by failing to submit to the executive director an annual report from January 1 - December 31, 2001, indicating the number and type of used or scrap tires collected listed by generator name, address, the disposition of the tires, and the number of whole used or scrap tires delivered to each facility; and 30 TAC §328.58(b), by failing to complete all required information on the tire manifests; PENALTY: $6,930; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Jim Sparks dba Sparky's Car Salvage Number 2; DOCKET NUMBER: 2007-1153-WQ-E; TCEQ ID NUMBER: RN105243703; LOCATION: 282 Private Road 1672, Stephenville, Erath County; TYPE OF FACILITY: auto salvage operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to develop and implement a storm water pollution prevention plan and obtain permit coverage to discharge storm water at an industrial site; PENALTY: $2,000; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Dr., Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Kamal Kassira dba East Food Mart; DOCKET NUMBER: 2006-0048-PST-E; TCEQ ID NUMBER: RN102045739; LOCATION: 2740 Sandy Lane, Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §334.48, by failing to conduct inventory control procedures for all USTs involved in the retail sale of petroleum substances as motor fuel; 30 TAC §334.48(c)(4)(A)(vii) and §334.8(c)(5)(B)(ii), by failing to ensure that an application for renewal of a delivery certificate is properly and timely filed; 30 TAC §334.48(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for Fiscal Year 2005 as recorded in TCEQ Financial Account Number 0055906U; and Default Order, Docket Number 2000-0178-PST-E, Ordering Provision Number 1, by failing to pay the $2,500 administrative penalty as ordered in the aforementioned Default Order, effective July 23, 2001; PENALTY: $6,875; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas/Fort Worth Regional Office, 2309 Gravel Dr., Fort Worth, TX 76118-6951, (817) 588-5800.

(5) COMPANY: Los Ojuelos Water Company, Inc.; DOCKET NUMBER: 2007-0396-PWS-E; TCEQ ID NUMBER: RN101196673; LOCATION: approximately three miles south of Mirando City, on Farm-to-Market Road 649, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence to protect the wells; 30 TAC §290.46(v), by failing to ensure that all water system electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.41(c)(3)(N), by failing to provide flow measuring devices to measure production yields and provide for the accumulation of water production data; PENALTY: $684; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(6) COMPANY: RFK Enterprises, Inc. dba Food Spot 2; DOCKET NUMBER: 2005-0613-PST-E; TCEQ ID NUMBER: RN101909695; LOCATION: 5011 Monroe Street, Groves, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and §334.50(b)(2) and TWC, §26.3475(a) and (c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month and by failing to monitor the UST system in a manner which will detect a release from any portion of the piping system; and 30 TAC §334.46(g), by failing to properly cap and secure all monitoring wells to prevent unauthorized access, tampering and any deliberate or accidental depositing of unauthorized substances and prevent surface run-off from entering the well; PENALTY: $4,950; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Ricardo Aguero dba Aguero's Trucking; DOCKET NUMBER: 2004-0706-MSW-E; TCEQ ID NUMBER: RN104154562; LOCATION: one mile north of the intersection of Highway 359 and J.C. Perez on the east side of J.C. Perez Road, Oilton, Webb County; TYPE OF FACILITY: solid waste transportation business which transported and disposed of municipal solid waste at an unauthorized landfill; RULES VIOLATED: 30 TAC §330.5, by transporting and disposing of municipal solid waste in an unauthorized landfill on May 18, August 6, August 21 - 23, 1997, May 17, May 20, June 9, 1999, May 2, and May 16 - 17, 2001; PENALTY: $27,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Ricardo Aguero dba Aguero's Trucking; DOCKET NUMBER: 2005-1908-MSW-E; TCEQ ID NUMBER: RN104154562; LOCATION: two miles east of the intersection of Bob Bullock and Highway 359, Laredo, Webb County; TYPE OF FACILITY: solid waste transportation business which transported and disposed of municipal solid waste at an unauthorized landfill; RULES VIOLATED: 30 TAC §330.5(c) and §330.32(b), by failing to ensure that all solid waste collected and transported is disposed of only in authorized facilities; PENALTY: $3,500; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(9) COMPANY: West Texas Gas, Inc. dba WTG San Angelo Warehouse; DOCKET NUMBER: 2007-0311-PST-E; TCEQ ID NUMBER: RN102249653; LOCATION: 4006 South Chadbourne Street, San Angelo, Tom Green County; TYPE OF FACILITY: petroleum and bulk facility with retail and wholesale sales of petroleum products, such as gasoline, diesel, kerosene, and aviation gasoline; RULES VIOLATED: TWC, §26.121(a) and §26.266(a), by failing to immediately undertake all reasonable actions to abate and remove a discharge or spill; and TWC, §26.121 and §26.266(a), by failing to complete the remediation of a previous release of petroleum hydrocarbons; PENALTY: $30,000; STAFF ATTORNEY: Barham Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE:

San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200806030
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 18, 2008

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 29, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 29, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Allen Watts dba Lago Vista Water System; DOCKET NUMBER: 2008-0977-PWS-E; TCEQ ID NUMBER: RN102676350; LOCATION: 1918 South State Highway 80, Luling, Guadalupe County; TYPE OF FACILITY: public water facility; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1, of each year and by failing to submit a copy of the annual CCR and certification that the CCR is correct and consistent with compliance monitoring data, to the TCEQ by July 1, of each year; PENALTY: $2,068; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Classic Convenience Inc. dba Step in Food; DOCKET NUMBER: 2006-1473-PST-E; TCEQ ID NUMBER: RN102365392; LOCATION: 5711 Irvington Boulevard, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.248(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that at least one station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review upon request by agency personnel; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $4,725; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Corby Hicks; DOCKET NUMBER: 2007-1942-LII-E; TCEQ ID NUMBER: RN103393344; LOCATION: 2110 Burnie Bishop Place, Cedar Park, Williamson County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.70, by failing to comply with local regulations; and 30 TAC §344.93(c), by failing to refrain from false, misleading, or deceptive practices by a licensed irrigator or a licensed installer; PENALTY: $500; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: D. W. Subdivision - Water Supply Corporation; DOCKET NUMBER: 2006-1060-PWS-E; TCEQ ID NUMBER: RN101259075; LOCATION: one mile northwest of the intersection of Farm-to-Market Road 1948 and Roberts Road, Washington County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and by failing to provide public notice for the months of May 2004 - March 2006; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay past due public health service fees for Account Number 92390016 for Fiscal Years 2005 and 2006; PENALTY: $12,765; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: John R. Limas; DOCKET NUMBER: 2006-1905-LII-E; TCEQ ID NUMBER: RN103929220; LOCATION: 2907 South Fairfield Street (the Business), and 8102 El Paso Drive (Site one), and 8202 El Paso Drive (Site two), Amarillo, Randall County; TYPE OF FACILITY: landscaping business sold and installed irrigation systems at Site one and Site two; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to have a TCEQ irrigator license prior to selling and installing landscape irrigation systems for Castillo Homes at the sites during May and June 2005; PENALTY: $1,250; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Kermit Willett; DOCKET NUMBER: 2008-0567-MLM-E; TCEQ ID NUMBER: RN105152904; LOCATION: Flowing Wells Subdivision, Section 1, one mile southeast of earthen dam, approximately 150 feet north of Farm-to-Market Road 1127, adjacent to slough area near Shepherd, San Jacinto County; TYPE OF FACILITY: unauthorized disposal and burn site; RULES VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized disposal of municipal

hazardous waste; and 30 TAC §111.201 and THSC, §382.085(b) by failing to comply with the prohibition on outdoor burning; PENALTY: $2,290; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Millenium Gasoline Corporation dba Teasley Shell; DOCKET NUMBER: 2006-2220-PST-E; TCEQ ID NUMBER: RN101556694; LOCATION: 1700 Teasley Lane, Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4) and (7)(A) and THSC, §382.085(b), by failing to maintain records on-site at the station ordinarily manned during business hours, and make immediately available for review upon request; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; 30 TAC §115.248(1) and THSC §382.085(b), by failing to make every current employee aware of the purposes and correct operating procedures of the Stage II vapor recovery system; 30 TAC §334.10(b), by failing to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ; 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i)(III), and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), by failing to provide release detection for the piping associated with the USTs, by failing to test the line leak detectors at least once per year for performance and operational reliability, and by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Financial Account Number 0057440U for Fiscal Years 2005 and 2006; PENALTY: $8,400; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Mohammad K. Ali dba Sunnys Food Store; DOCKET NUMBER: 2006-1518-PST-E; TCEQ ID NUMBER: RN101776557; LOCATION: 11050 South Post Oak Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4) and (5) and THSC, §382.085(b), by failing to maintain the Stage II records and make them immediately available for inspection upon request by agency personnel; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order(s), and free of defects that would impair the effectiveness of the system; PENALTY: $8,250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Saif Malik Enterprises, Inc. dba Step N Go; DOCKET NUMBER: 2006-1569-PST-E; TCEQ ID NUMBER: RN104586540; LOCATION: 8398 North Houston Rosslyn Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training in the operation and maintenance of the Stage II vapor recovery system; and 30 TAC §115.246(1), (3) and (7)(A) and THSC, §382.085(b), by failing to maintain the Stage II records on site and make them immediately available for review upon request; PENALTY: $3,150; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(10) COMPANY: Tynan Water Supply Corporation; DOCKET NUMBER: 2008-0540-MWD-E; TCEQ ID NUMBER: RN103051710; LOCATION: approximately 250 feet southeast of State Highway (SH) 359 and approximately 500 feet northeast of the intersection of SH 359 and Farm-to-Market Road 796, Bee County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014123001, Monitoring and Reporting Requirements, Number 1, by failing to submit monitoring results at the intervals specified in its permit; 30 TAC §305.125(17) and TPDES Permit Number WQ0014123001, Sludge Provisions, by failing to submit monitoring results at the intervals specified in its permit; and 30 TAC §21.4 and TWC, §5.702, by failing to pay the Consolidated Water Quality Fees for Account Number 23005022 for Fiscal Year 2008 and associated late fees; PENALTY: $26,750; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-200806031
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 18, 2008

Notice of Water Quality Applications

The following notices were issued during the period of November 10, 2008 through November 14, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AQUA DEVELOPMENT INC. has applied for a renewal of TPDES Permit No. WQ0014148001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The facility will be located approximately 12 miles northeast of the intersection of Highway 290 and Farm-to-Market Road 973 in Williamson County, Texas.

AQUA UTILITIES INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010742001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located within the Brentwood Manor Subdivision, approximately 0.4 mile south of U.S. Highway 59 and immediately east of Marcado Creek, 2.0 miles due west of the intersection of U.S. Highway 59 and State Highway Loop 175 in Victoria County, Texas.

CITY OF ALVIN has applied for a renewal of TPDES Permit No. WQ0010005001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons

per day. The facility is located approximately 3,000 feet west of the intersection of County Roads 160 and 158, and approximately 3.5 miles northeast of the intersection of State Highway 35 and Farm-to-Market Road 2917, south of the City of Alvin in Brazoria County, Texas.

CITY OF CISCO has applied for a renewal of TPDES Permit No. WQ0010424002, which authorizes the discharge of filter backwash water at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 400 feet west of State Highway 6 and approximately 800 feet downstream of the Lake Cisco Dam, and approximately 3.5 miles north of the intersection of U.S. Highway 80 and State Highway 6 in Eastland County, Texas.

CITY OF COMANCHE has applied for a renewal of Permit No. WQ0004444000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 47 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located on the left side of County Road 403, one-half mile west of the intersection of County Road 403 and State Highway 16 in Comanche County, Texas.

CITY OF FLORENCE has applied for a renewal of TPDES Permit No. WQ0010944001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 1.25 miles southeast of the intersection of State Highway 195 and Farm-to-Market Road 487 in Williamson County, Texas.

CITY OF LA VERNIA has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011258001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located on River Street approximately 2,000 feet east of Farm-to-Market Road 775 in Wilson County, Texas.

CITY OF MARQUEZ has applied for a renewal of TPDES Permit No. WQ0013980001, 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 3,900 feet southeast of the intersection of U.S. Highway 79 and State Highway 7 in Leon County, Texas. The treated effluent is discharged via pipeline to an unnamed tributary; thence to Brushy Creek; thence to Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin.

CITY OF MORGAN has applied for a renewal of TPDES Permit No. WQ0012217002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of Farm-to-Market Road 927 and State Highway 174 on State Highway 174 in Bosque County, Texas.

CITY OF ROXTON has applied for a renewal of TPDES Permit No. WQ0010204001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. TCEQ received this application on June 9, 2008. The facility is located approximately 2,400 feet southeast of the intersection of Farm-to-Market Road 137 and Chaparral Railroad on the north side of Denton Creek and on the south side of the City of Roxton in Lamar County, Texas.

CITY OF SAN SABA has applied for a renewal of TPDES Permit No. WQ0010687001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day. The facility is located at 2,000 feet north of U.S. Highway 190 and 6,000 feet east of State Highway 16 in the City of San Saba in San Saba County, Texas.

DRIL QUIP INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014655001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located at 6401 North Eldridge Parkway, approximately 1,000 feet north and 4,800 feet west of the intersection of West Little York Road and North Eldridge Parkway in Harris County, Texas.

ENTERPRISE PRODUCTS OPERATING LLC which operates Enterprise Mont Belvieu Complex, has applied for a renewal of TPDES Permit No. WQ0003499000, which authorizes the discharge of treated non-contact storm water (previously monitored at Outfall 401); and treated contact storm water, facility washdown water, cooling tower filter backwash, cooling tower blowdown, neutralized storm water, and treated wastewaters from other permittee owned and operated facilities similar in nature (previously monitored at Outfall 501) via Outfall 001. The facility is located in the area enclosed by Hatcherville Road on the west, Union Pacific Railroad on the east, the South Plant of the Mont Belvieu Complex on the south, and pasture land on the north, approximately 2,000 feet north of the intersection of Hatcherville Road and Farm-to-Market Road 1942, in the City of Mont Belvieu, Chambers County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 112 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TPDES Permit No. WQ0013628001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 2,500,000 gallons per day to an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 4050 U.S. Highway 90A, in Sugar Land, approximately 3,000 feet north of the Brazos River and 4,800 feet west of Sartartia Road (Farm-to-Market Road 1464 south of U.S. Highway 90A), and 8,000 feet south of U.S. Highway 90A in Fort Bend County, Texas.

GULBRANDSEN TECHNOLOGIES INC. which operates the La Porte Facility, an aluminum chlorohydrate, poly aluminum chloride, and aluminum chloride solution manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0001785000, which authorizes the discharge of process wastewater, utility wastewater, storm water, and previously monitored effluent (treated domestic wastewater) at a daily average flow not to exceed 100,000 gallons per day via Outfall 001; treated domestic wastewater on a flow variable basis via Outfall 101; and storm water on an intermittent and flow variable basis via Outfall 002. This application was submitted to the TCEQ on April 15, 2008. The facility is located north of and adjacent to Strang Road, approximately 0.5 mile east of the intersection of Strang Road and U.S. Highway 225 in the City of La Porte, Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 74 has applied for a major amendment of TPDES Permit No. WQ0010679001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 840,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The facility is located at 4735 Winfield, in Houston, approximately 3,500 feet west-southwest of the intersection of U.S. Highway 59 and Aldine Mail Route in Harris County, Texas.

KEESHAN AND BOST CHEMICAL CO. INC. which operates the Keeshan & Bost Chemical Plant has applied for a renewal of TPDES Permit No. WQ0002068000, which authorizes the discharge of process wastewater commingled with utility wastewaters and storm water runoff at a daily average flow not to exceed 3300 gallons per day via Outfall 001 and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located at 22102 State Highway 6, on the south side of State Highway 6, approximately two miles east of the City of Manvel, Brazoria County, Texas.

NUSTAR TERMINALS PARTNERS TX LP which operates Texas City Terminal I, has applied for a major amendment to TPDES Permit No. WQ0002109000 to authorize the addition of hydrostatic test water, steam condensate, and air conditioner condensate to the wastestreams at Outfall 001; an increase in the daily average flow limit at Outfall 002; an increase in the loading based limits based on the increase in flow at Outfall 002; and the addition of storm water runoff, hydrostatic test water, steam condensate, and air conditioner condensate via new Outfalls 003, 004, 005 and 006. The current permit authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 001 and process wastewater, boiler blowdown, storm water runoff, and treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day via Outfall 002. The facility is located at 201 Main Dock Road, adjacent to Texas City Ship Channel Turning Basin in the City of Texas City, Galveston County, Texas.

PRAXAIR INC. which operates Praxair, a cryogenic air separation plant producing oxygen, nitrogen and argon, has applied for a renewal of TPDES Permit No. WQ0002529000, which authorizes the discharge of utility wastewater (including cooling tower blowdown and atmospheric condensate), treated domestic wastewater, truck and maintenance wash water, and storm water at a daily average dry-weather effluent flow not to exceed 540,000 gallons per day via Outfall 001. The facility is located at the intersection of Strang Road and State Highway 225 in the City of La Porte, Harris County, Texas.

ROYAL VALLEY UTILITIES INC. has applied for a renewal of TPDES Permit No. WQ0013940001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 2.5 miles east southeast of the intersection of Farm-to-Market Road 2759 and Farm-to-Market Road 762 in Fort Bend County, Texas.

THE LOWER COLORADO RIVER AUTHORITY AND THE BRAZOS RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011324001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,700,000 gallons per day. The facility is located 1,300 feet east of Farm-to-Market Road 1660 and 1,500 feet south of State Highway 79 in the City of Hutto, in Williamson County, Texas.

UNITED STATES DEPARTMENT OF THE AIR FORCE has applied for a renewal of TPDES Permit No. WQ0012651001, which authorizes the discharge of treated domestic wastewater at daily average flow not to exceed 490,000 gallons per day. The facility is located on the southwest section of Laughlin 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.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0010698002 to authorize an increase in the annual average flow of the interim I phase of Outfall 002 from the current 1,000,000 gallons per day to 1,500,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,700,000 gallons per day. The facility is located on the south side of the Little Elm Creek branch of Lewisville Lake, approximately 3,000 feet northwest of the intersection of U.S. Highway 380 and Navo Road in Denton County, Texas.

VILLAGE OF BRIARCLIFF has applied for a major amendment to Permit No. WQ0013639001, to authorize an increase in the daily average flow from 11,000 gallons per day to 34,300 gallons per day; to increase the disposal site from 52,300 square feet to 343,300 square feet of non-public access land; and to authorize a change in the method of effluent disposal from subsurface drainfields to a combination of subsurface drainfields and a subsurface area drip dispersal system. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3.8 miles northeast of the intersection of State Highway 71 and Farm-to-Market Road 2322 (Pace Bend Road) and approximately 0.4 mile northeast of the intersection of Farm-to-Market Road 2322 and Cat Hollow Club Drive in Travis County, Texas.

ZXP TECHNOLOGIES LTD which operates a contract packaging facility for automotive and industrial antifreeze, specialty automotive chemicals, motor oils, transmission fluids, adipic acids, pesticides, and agricultural chemicals has applied for a renewal of TPDES Permit No. WQ0001062000, which authorizes the discharge of washwaters from the antifreeze and oil blending areas, antifreeze and oil packaging areas, and the railroad unloading area; boiler blowdown, and storm water a daily average flow not to exceed 115,000 gallons per day via Outfall 001. The facility is located 409 East Wallisville Road, two miles north of Interstate Highway 10 and 0.3 mile east of South Main Street, in the Community of Highlands, Harris County, Texas.

If you need more information about these permit applications or the permitting process; please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200806049
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 19, 2008

Public Notice - Shutdown/Default Order

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 29, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 29, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: Steven Switzer dba Our C Store 502; DOCKET NUMBER: 2007-1907-PST-E; TCEQ ID NUMBER: RN102254414; LOCATION: 640 North Story Road, Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II Records on-site at the station ordinarily manned during business hours, and make them immediately available for review upon request; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; 30 TAC §115.242(3) and (8) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to, absence or disconnection of any component that is a part of the approved system, and by failing to ensure that no person shall tamper in a manner that would impair the operation or effectiveness of the systems; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and available for the inspection upon request by TCEQ personnel; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank at the end of each operating day; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $18,125; STAFF ATTORNEY: Benjamin Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200806029
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 18, 2008

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Texas Facilities Commission

Request for Proposals #303-9-10308-A

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Assistive Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-9-10308-A. TFC seeks a 5 or 10 year lease of approximately 15,526 square feet of office space in Tyler, Smith County, Texas.

The deadline for questions is December 5, 2008 and the deadline for proposals is December 19, 2008 at 3:00 p.m. The award date is January 21, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79916*.

TRD-200806052
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 19, 2008

Request for Proposals #303-9-10688

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-10688. TFC seeks a five or ten year lease of approximately 5,733 square feet of office space in Dallas, Dallas County, Texas.

The deadline for questions is December 5, 2008 and the deadline for proposals is January 21, 2009 at 3:00 p.m. The award date is March 18, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79881*.

TRD-200806046
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 19, 2008

Request for Proposals #303-9-10746

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-9-10746. TFC seeks a five (5) or ten (10) year lease of approximately 4,350 square feet of office space in Giddings, Texas.

The deadline for questions is December 12, 2008 and the deadline for proposals is December 22, 2008 at 3:00 p.m. The award date is February 18, 2009. TFC reserves the right to accept or reject any or all

proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=79885.*

TRD-200806041
Kay Molina
General Counsel
Texas Facilities Commission
Filed: November 19, 2008

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective December 1, 2008.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for services provided by:

Physicians and certain other practitioners

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

Ambulatory Surgical Centers (ASCs)

The proposed amendments are estimated to result in an additional annual aggregate expenditure of $451,695 for federal fiscal year (FFY) 2009, with approximately $268,488 in federal funds and $183,207 in State General Revenue (GR). For FFY 2010, the estimated additional aggregate expenditure is $588,652, with approximately $344,891 in federal funds and $243,761 in GR. For FFY 2011, the estimated additional aggregate expenditure is $639,279, with approximately $371,421 in federal funds and $267,858 in GR.

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200805911
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: November 12, 2008

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services 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
Comanche	Comanche County Consolidated Hospital Dist. DBA Comanche County Medical Center	L06200	Comanche	00	10/31/08
Dallas	IBA Molecular North America Inc. DBA IBA Molecular	L06174	Dallas	00	10/31/08
Dallas	The Heartbeat Clinic	L06204	Dallas	00	11/07/08
Dallas	Deuteronomy DBA The Harper Clinic	L06195	Dallas	00	11/10/08
Houston	Memorial Hermann Hospital System DBA River Oaks Imaging and Diagnostic	L06181	Houston	00	10/27/08
Houston	Houston Cancer Institute PA DBA Houston Diagnostics and PET/CT Center	L06193	Houston	00	10/31/08
San Angelo	Regional Employee Assistance Program DBA Community Medical Associates	L06172	San Angelo	00	11/03/08
The Woodlands	Woodlands Internists PA	L06201	The Woodlands	00	10/31/08
Throughout Tx	CMT-TEC LLC	L06205	Laredo	00	11/06/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	St. David's Healthcare Partnership LP LLP DBA North Austin Medical Center	L04910	Austin	80	11/12/08
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	56	11/10/08
Beaumont	Sartomer Company Inc.	L05937	Beaumont	03	10/31/08
Bonham	Attentus Bonham LP DBA Red River Regional Hospital	L03331	Bonham	37	11/10/08
Clifton	Goodall Witcher Healthcare Foundation	L03427	Clifton	17	11/12/08
Corpus Christi	Christus Health System Dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	86	11/07/08
Corpus Christi	Corpus Christi Radiology Center	L04493	Corpus Christi	15	11/07/08
Corpus Christi	Associates in Heart Disease DBA Corpus Christi Heart Clinic and Vascular Institute	L05023	Corpus Christi	17	11/07/08
Cypress	North Cypress Medical Ctr. Operating Co. LLC DBA North Cypress Medical Center	L06020	Cypress	11	11/06/08
Dallas	Methodist Hospitals of Dallas Radiology Svcs.	L00659	Dallas	58	11/05/08
Dallas	Afridi Heart Care PA	L06005	Dallas	03	11/05/08
Dallas	James D. Boehrer, M.D.	L05508	Dallas	05	11/07/08
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	179	11/12/08
Denton	Trace Life Sciences Inc.	L05435	Denton	19	11/05/08
El Paso	Edward R. Assi, DO PA	L05695	El Paso	06	11/04/08
El Paso	Center for Intergrative Cancer Medicine PA	L05880	El Paso	03	11/05/08
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	67	11/04/08
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	26	11/12/08
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	24	11/04/08
Houston	Medical Clinic of Houston LLP	L01315	Houston	34	11/07/08
Houston	Veterinary Cancer Associates DBA Gulf Coast Vet. Oncology DBA Gulf Coast Vet. Diagnostic Imaging	L04803	Houston	14	11/07/08
Houston	Woodlands-North Houston Cardiovascular Imaging Center	L04253	Houston	23	11/07/08
Houston	Memorial City Cardiology Associates DBA Katy Cardiology Associates	L05713	Houston	10	11/13/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Houston Community College System Nuclear Medicine Technology Program	L03099	Houston	19	11/13/08
Houston	North Houston Imaging Center, Ltd.	L04591	Houston	06	11/13/08
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	36	11/07/08
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	10	11/10/08
McKinney	Taysir F. Jarrah, M.D. PA Cardiology	L05464	McKinney	06	11/07/08
Midland	Isotech Laboratories Inc.	L04283	Midland	23	10/30/08
Muenster	Muenster Hospital District DBA Muenster Memorial Hospital	L04887	Muenster	12	11/05/08
Pampa	Laxmichand Kamnani DBA Pampa Heart Clinic	L05273	Pampa	05	11/04/08
Pasadena	David S. Hamer, M.D. PA DBA Southeast Houston	L05364	Pasadena	07	11/05/08
Pearland	Premier Heart Specialists PA	L05750	Pearland	08	11/07/08
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	40	11/03/08
Port Lavaca	Union Carbide Corporation A subsidiary of the Dow Chemical Company	L00051	Port Lavaca	90	11/12/08
Rowlett	Lake Pointe Operating Company LLC DBA Lake Pointe Medical Center	L04060	Rowlett	15	11/07/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	249	11/04/08
San Antonio	University of Texas at San Antonio Environmental Health Safety and Risk Mgmt.	L01962	San Antonio	59	11/07/08
Shenandoah	Urotex Limited	L06116	Shenandoah	01	11/12/08
Southlake	Healthcare Associates of Southlake LLP DBA Executive Medicine of Texas	L05854	Southlake	02	11/13/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	16	11/04/08
Throughout Tx	Lotus LLC	L05147	Andrews	16	11/06/08
Throughout Tx	KXR Inspection Inc.	L01074	Barker	109	11/07/08
Throughout Tx	Applied Standards Inspection Inc.	L03072	Beaumont	104	11/12/08
Throughout Tx	City of Brownwood Engineering Department	L05073	Brownwood	07	11/10/08
Throughout Tx	Terracon Consultants Inc.	L05268	Dallas	28	11/04/08
Throughout Tx	Tucker Energy Services Inc.	L06157	Denton	04	11/07/08
Throughout Tx	Waggoner and Associates Inc. DBA Waggoner-Texas and Associates Inc.	L06159	Flint	04	11/12/08
Throughout Tx	Metco	L03018	Houston	193	11/04/08
Throughout Tx	Metco	L03018	Houston	194	11/07/08
Throughout Tx	Oceaneering International Inc. Solus Schall Div.	L04463	Ingleside	65	11/06/08
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	248	11/12/08
Throughout Tx	Master Industries Inc.	L05872	Liberty	18	11/04/08
Throughout Tx	Master Industries Inc.	L05872	Liberty	19	11/12/08
Throughout Tx	Hi-Tech Testing Service Inc.	L05021	Longview	73	11/13/08
Throughout Tx	T. C. Inspection Inc.	L05833	Oyster Creek	34	11/12/08
Throughout Tx	Total Petrochemicals USA Inc.	L03498	Port Arthur	24	11/10/08
Throughout Tx	All American Inspection Inc.	L01336	San Antonio	66	11/10/08
Throughout Tx	RABA-Kistner Consultants Inc. DBA Raba-Kistner-Brytest Consultants Inc.	L01571	San Antonio	62	11/12/08
Waco	Hillcrest Baptist Medical Center	L00845	Waco	84	11/13/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Ineos USA LLC	L01422	Alvin	69	11/12/08
Austin	Austin Eye Clinic Association	L01642	Austin	15	11/04/08
Hereford	Deaf Smith County Hospital DBA Hereford Regional Medical Center	L03111	Hereford	15	11/10/08
Humble	Memorial Hermann Hospital Systems DBA Memorial Hermann Northeast	L02412	Humble	72	11/04/08
McAllen	Texas Oncology PA DBA South Texas PET Imaging	L05485	McAllen	08	11/04/08
Nocona	Nocona Hospital District DBA Nocona General Hospital	L04977	Nocona	13	11/04/08
Texas City	CHCA Mainland LP DBA Mainland Medical Center	L02577	Texas City	36	10/30/08
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	196	10/31/08
Throughout Tx	Oceaneering International Inc. Solus Schall Division.	L04463	Ingleside	64	10/31/08
Throughout Tx	Big State X-Ray	L02693	Odessa	72	11/04/08
Throughout Tx	Conam Inspection & Engineering Inc.	L05010	Pasadena	156	10/31/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
El Paso	Pan American General Hospital LLC DBA Southwestern General Hospital	L02338	El Paso	34	11/07/08
Flower Mound	Imaging Specialists Group Ltd. DBA Imaging Specialists	L05407	Flower Mound	13	11/06/08
Houston	River Oaks Imaging and Diagnostic	L04342	Houston	63	10/27/08
Houston	River Oaks Imaging and Diagnostic	L05455	Houston	19	10/27/08
Houston	River Oaks Imaging and Diagnostic	L05475	Houston	17	10/27/08
Houston	River Oaks Imaging and Diagnostic	L05493	Houston	19	10/27/08
San Angelo	American Diagnostic Medicine Inc	L06068	San Angelo	04	11/03/08
Throughout Tx	Grant Works Inc.	L05380	Austin	07	10/31/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning 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 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 person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200805950
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 17, 2008

♦ ♦ ♦

Texas Department of Housing and Community Affairs

2009 Emergency Shelter Grant Program: Notice of Funding Availability

I. Background and Purpose of Emergency Shelter Grant Program (ESGP) Notice of Funding Availability (NOFA)

The Emergency Shelter Grants Program (ESGP), funded through the U.S. Department of Housing and Urban Development, is to be utilized for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless, and for homelessness prevention activities. The program is designed to be the first step in a continuum of assistance to enable homeless individuals and families to move toward independent living, as well as to prevent homelessness. The objectives of the ESGP shall be to: help improve the quality of emergency shelters for the homeless; help meet the costs of operating and maintaining emergency shelters; provide essential services so that homeless individuals have access to the assistance they need to improve their situation; and provide emergency intervention assistance to prevent homelessness.

The Texas Legislature designated the Texas Department of Housing and Community Affairs (the Department) to administer this program pursuant to §2306.094 of the Texas Government Code.

The Department has not been notified of the ESGP award amount for Texas in FY 2009. However, the Department anticipates receiving approximately $5 million for FY 2009. Funding availability is contingent on the amount of ESGP funds received from the U.S. Department of Housing and Urban Development.

II. Notice of Funding Availability (NOFA)

The Department will accept applications in response to the 2009 ESGP NOFA. ESGP funds will be made available to eligible applicants to carry out the purpose of the ESGP based on this statewide competitive NOFA process.

III. ESGP NOFA Qualifications

Applicants responding to this NOFA must meet the qualifications of the NOFA. Eligible applicants include cities and counties and private non-profit organizations with an existing status as a §501(c) tax-exempt entity as defined by the Internal Revenue Service. Private non-profit organizations applying for ESGP funds must be established for charitable purposes and whose activities include, but are not limited to, the promotion of social welfare and the prevention or elimination of homelessness.

Applicants that are awarded ESGP funds must match their award amount with an equal or greater amount of resources other than ESGP funds.

IV. Contract Period

The contract period will be September 1, 2009 through August 31, 2010.

V. Reimbursements

Subrecipients will be paid on a reimbursement basis and will only be issued a one time advance during the first month of the contract.

VI. Application Deadline and Availability

The 2009 ESGP NOFA will be posted on the Department's website: http://www.tdhca.state.tx.us/cs.htm#ESGP and organizations on the Department's ESGP interested party list and the Department's list serve will receive an e-mail notification that the NOFA is available on the Department's web-site.

Deadline for Receipt: Thursday, January 8, 2009 by 5:00 p.m. CST

Mailing Address: Ms. Amy M. Oehler, Director

Community Affairs Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, Texas 78711-3941

(All U.S. Postal Service including Express)

Courier Delivery: 221 East 11th Street, 1st Floor

Austin, Texas 78701

(FedEx, UPS, Overnight, etc.)

Hand Delivery: If you are hand delivering the application, contact J. Al Almaguer at (512) 475-3908 (Al.Almaguer@tdhca.state.tx.us) or Rita Gonzales-Garza at (512) 475-3905 (Rita.Garza@tdhca.state.tx.us) when you arrive at the lobby of our building for application acceptance.

Questions: Questions pertaining to the content of the 2009 ESGP NOFA or eligible activities may only be directed to Rita Gonzales-Garza at (512) 475-3905 (Rita.Garza@tdhca.state.tx.us) and J. Al Almaguer at (512) 475-3908 (Al.Almaguer@tdhca.state.tx.us).

TRD-200806036
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 18, 2008

2009 Housing Trust Fund Rental Production Program: Notice of Funding Availability (NOFA)

1) Summary.

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $2,594,000 in funding from the Housing Trust Fund for financing of affordable rental housing for very low-income and extremely low-income Texans. The availability and use of these funds is subject to the state Housing Trust Fund Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 51 ("HTF Rules") and Chapter 2306 of the Texas Government Code in effect at the time an application is submitted. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

2) Allocation of Housing Trust Funds.

a) These funds are made available through 2008 and 2009 General Revenue Funds and local revenues appropriated to the Housing Trust Fund during the 80th Legislative Session for financing rental housing developments which involve new construction, rehabilitation or acquisition and rehabilitation. All funds released under this NOFA are to be used for the subsidizing of affordable rental housing units that target very low-income Texans earning 50% or less of Area Median Family Income (AMFI). Additionally, if the funds are used to target extremely low-income Texans earning 30% or less of the AMFI and those units are not designated to serve extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA §515 program loans and rental assistance or project-based Section 8, the Department may allow a forgivable loan only for those extremely low-income units.

b) In accordance with 10 TAC §51.12, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served statewide basis. Applications will be accepted until 5:00 p.m. April 6, 2009 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

c) The Department will allocate Housing Trust Fund awards as a loan, to eligible recipients for the provision of housing for very low and extremely low-income individuals and families. The Department's underwriting guidelines at 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum.

d) Award amounts are limited to no more than $500,000 per development.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program.

f) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

3) Eligible and Ineligible Activities and Restrictions.

a) Eligible activities will include the financing, new construction, acquisition and/or rehabilitation of affordable rental housing developments.

b) If an application is determined ineligible pursuant to §51.8(d)(9), the application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

c) Restrictions include the displacement of existing affordable housing. Pursuant to §2306.203(a)(4) of the Texas Government Code, Housing Trust Funds shall not be utilized on a development that has the effect of permanently and involuntarily displacing low, very low, and extremely low income persons and families. Low-Income persons who may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses. If a Housing Trust Fund recipient violates the permanent dislocation provision of this subsection, that recipient risks loss of Housing Trust Funds and the landlord/developer must pay the affected tenant's costs and all moving expenses.

4) Eligible and Ineligible Applicants.

a) The Department provides HTF to qualified local units of government, public housing authorities, nonprofit organizations and for-profit entities.

b) Ineligible Applicants will include the following:

i) Previously funded recipient(s) whose Housing Trust Funds have been partially or fully deobligated due to failure to meet contractual obligations during the twelve (12) months prior to the current funding cycle;

ii) Applicants, or persons affiliated with the Applicant that have been barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

iii) Applicants or persons affiliated with the Applicant that are subject of enforcement action under state or federal securities law, or are the subject of an enforcement proceeding with a state or federal agency or another governmental entity;

iv) Applicants or persons affiliated with the Applicant that have unresolved audit findings related to previous or current funding agreements with the Department;

v) Applicants or persons affiliated with the Applicant that have delinquent loans, fees or other commitments with the Department, until payment is made;

vi) Applicants who have not satisfied all threshold requirements described in 10 TAC Chapter 51, and the NOFA to which they are responding, and for which Administrative Deficiencies were unresolved;

vii) Applicants who have submitted incomplete Applications;

viii) Applicants or persons affiliated with the Applicant that have been otherwise barred by the Department;

ix) Applicants are subject to 10 TAC §1.13; or

x) Applicants or persons affiliated with the Applicant that have breached a contract with a public agency.

c) Each Application will be reviewed for its compliance history by the Department, consistent with 10 TAC Chapter 60. Applicants, or persons affiliated with an Application, found to have a Development or Contract in Material Noncompliance with the Department, will have their Application(s) terminated.

5) Affordability Requirements.

a) Pursuant to §2306.203(6) of the Texas Government Code, Applicants proposing multifamily housing, new construction or rehabilitation, will be required to guarantee the Development will remain affordable to income qualified families or individuals for a period of twenty (20) years.

b) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

6) Site and Development Restrictions.

a) Housing that is constructed or rehabilitated with HTF funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of local codes applications will be required to meet Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply.

b) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601-3619). Any Developments designed as single family structures must also satisfy the requirements of §2306.514 of the Texas Government Code.

7) Threshold Criteria.

a) Housing units subsidized by HTF funds must be affordable to very-low (50% AMFI or below) or extremely low-income (30% AMFI or below) persons. Mixed Income rental developments may only receive funds for units that serve very-low or extremely low-income persons. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) The Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37.

c) Staff will not recommend to the Department's Governing Board any contingent payment loans except for applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and Guidelines described in 10 TAC §1.32.

d) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise. Applicants must demonstrate the application can meet the following threshold criteria to be considered for funding:

i) The application is consistent with the requirements established in the HTF rules and the NOFA.

ii) The Applicant provides evidence of its ability to carry out the proposal in the areas of financing, acquiring, rehabilitating, developing or managing an affordable housing development.

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, Applicants must target units for individuals or families earning 50% or less of area median family income for the development site. Additionally, 10% of the total units in the proposed development must be designated as HTF units. Developments with existing and continuing USDA §515 program loans and rental assistance or project-based Section 8 are exempt from this minimum targeting requirement. All units designated as HTF units must have corresponding income and rent restrictions.

iv) An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

v) All of the current Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §49.9(h), excluding paragraphs (11), (12), (14)(G) and (15).

8) Review Process.

a) Pursuant to 10 TAC §51.8, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in two review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two will be reviewed for recommendation to the Board by the Committee.

Phase Two will include a comprehensive review for financial feasibility for Development Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

Because applications are processed in the order they are received by the Department, it is possible that the Department will expend all available Housing Trust Fund funds before an application has completed all phases of review. In the case that all Housing Trust Fund funds are committed before an application has completed all phases of the review process, the Department will notify the Applicant that their application will remain active for ninety (90) days in its current phase. If new Housing Trust Fund funds become available, Applications will continue onward with their review without losing their Received Date priority. If Housing Trust Fund funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under the NOFA, the Applicant will be notified that no funds remain under the NOFA and that the application will not be processed.

b) If a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, the Application will be terminated without being processed as an Administrative Deficiency.

c) Pursuant to 10 TAC §51.12(e), a site visit will be conducted as part of the HTF Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HTF funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §51.12(g), it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and

Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

9) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 6, 2009. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at (512) 475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs. If an Application is submitted for two separate housing finance programs where both programs are either open cycle, or competitive, the Application will be handled in accordance with the guidelines of each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) Applications submitted to the Department must be complete and include all support documentation and associated application materials as described in this NOFA.

d) Applicants must submit copies of all Application materials as detailed in the Application Submission and Procedure Manual (ASPM) for Housing Trust Fund in effect at the time the application is submitted.

e) The application consists several partsand a complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted.

f) If third party reports are not received at the time of application submission, the Application will be terminated.

g) Application materials including manuals, NOFA, program guidelines, and applicable Housing Trust Fund rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $200.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential Applicants to review all applicable State and Federal regulations.

TRD-200806061
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

FY 2009 Texas Bootstrap Loan Program: Notice of Funding Availability

The Texas Department of Housing and Community Affairs (TDHCA), through its Office of Colonia Initiatives (OCI), is pleased to announce the availability of approximately Three Million Dollars ($3,000,000) of State of Texas Housing Trust Funds for the Texas Bootstrap Loan Program. The purpose of the funding is to purchase land and build new residential or improve existing residential housing through self-help construction methodologies for very low and extremely low income individuals and/or families (Owner-Builders) including persons with special needs. In an effort to attract a diverse group of nonprofit organizations that will serve various populations throughout the state and improve upon the efficiency of the traditional funding method, a reservation system will be utilized with this Notice of Funding Availability (NOFA). The reservation system must be utilized to secure these funds for Owner-Builder Applicants through nonprofit organizations certified by TDHCA as a Nonprofit Owner-Builder Housing Provider (NOHP) that has executed a Loan Origination Agreement in order to ensure compliance with the Texas Bootstrap Loan Program Rules and Guidelines.

In order for a nonprofit organization to be certified by TDHCA as a NOHP, the nonprofit organization must also qualify as a tax-exempt organization listed under §501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit Owner-Builder Housing Provider Requirements:

Designation as a NOHP and subsequent execution of a Loan Origination Agreement will entitle nonprofits to:

(1) Qualify potential Owner-Builders for loans under this program.

(2) Assist Owner-Builders in constructing or rehabilitating their home.

(3) Originate and/or service loans in compliance with Texas Bootstrap Loan Program Rules and Guidelines.

(4) Provide Owner-Builder education classes such as:

(a) financial responsibilities of an Owner-Builder, including the consequences of an Owner-Builder's failure to meet those responsibilities;

(b) building of housing by Owner-Builders;

(c) resources for low-cost building materials available to Owner-Builders; and

(d) resources for building assistance available to Owner-Builders.

§2306.753(a) of the Texas Government Code directs TDHCA to establish a priority in directing funds to Owner-Builders with an annual income of less than $17,500. The maximum loan amount using TDHCA funds may not exceed $30,000 per Owner-Builder. The total amount of loans made with TDHCA and any other source may not exceed a combined $60,000 per household. An NOHP will only be allowed to have up to ten reservations at any given time. Projects utilizing additional non-TDHCA resources will be required to provide additional documentation identifying the sources of these additional funds and information about their rates and terms.

Owner-Builder Eligibility Requirements:

To be eligible for up to a $30,000 loan from TDHCA, an Owner-Builder:

(1) Must not have an annual income that exceeds 60 percent, as determined by TDHCA, of the greater of the state or local Area Median Family Income (AMFI), when combined with the income of any person who resides with the Owner-Builder.

(2) Must have resided in this state for the preceding six (6) months.

(3) Must have successfully completed an Owner-Builder education class.

(4) Must agree to provide at least 60 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP; or must agree to provide an amount of labor equivalent to the amount required in connection with building or rehabilitating housing for others through a state certified NOHP.

(5) Must not be currently delinquent or in default on any government loan.

(6) Must not be currently delinquent or in default on child support payments.

(7) Total debt to income ratio cannot exceed 45 percent.

TDHCA is required under §2306.753(d) of the Texas Government Code, to set aside at least two-thirds ($2,000,000.00) of the available funds for Owner-Builders whose property is located in a county that is eligible to receive financial assistance under Subchapter K, Chapter 17, of the Water Code. The Texas Water Development Board considers a county eligible to receive financial assistance under Subchapter K, Chapter 17, Water Code, if: 1) the county contains an area that meets the criteria for an economically distressed area under Section 17.921(1), Water Code; and 2) the county has adopted and enforces the model rules under Section 16.343, Water Code. The remainder of the funding, one-third ($1,000,000), will be available statewide.

The following counties currently meet the criteria to qualify under the definition for an economically distressed area.

Bee

Brewster

Cameron

Coryell

Dimmit

Duval

Edwards

El Paso

Frio

Grimes

Harris

Hidalgo

Hudspeth

Jeff Davis

Jim Hogg

Jim Wells

Kerr

Kinney

La Salle

Liberty

Marion

Maverick

McCulloch

Newton

Nueces

Panola

Presidio

Real

Red River

Reeves

Sabine

San Patricio

Starr

Terrell

Tom Green

Uvalde

Val Verde

Webb

Willacy

Zapata

Zavala

For a current listing, you may visit the following website:

http://www.twdb.state.tx.us/assistance/msr/Resource%20Manual/msr.pdf

The amounts available for distribution are as follows:

For Fiscal Year 2009 (September 1, 2008)

$2,000,000 Economically Distressed Areas (EDA)

$1,000,000 Balance of State

In order to submit an Owner-Builder loan application for reservation, an NOHP that has received a Program award in the past must be meeting all performance benchmarks as outlined in their current contract or agreement and must have an active Loan Origination Agreement with the Department.

Reservation System Guidelines:

After being certified as an NOHP and executing a Loan Origination Agreement, the nonprofit organization may begin to submit loan applications on behalf of the Owner-Builder Applicant. If more than one Owner-Builder Application is submitted, they will be processed in the order entered into the Reservation System.

All Application/Compliance Packages will be reviewed on a first-come, first-served basis. There will be no expedited applications except for an Owner-Builder Applicant with an annual income of less than $17,500.

The following guidelines are a supplement to the Texas Bootstrap Loan Program Rules and Texas Bootstrap Loan Program Manual.

After the Loan Origination Agreement is executed, the NOHP must register each individual Owner-Builder applicant into the TDHCA Texas Bootstrap Loan Program Registration System using the TDHCA website. After registering the Owner-Builder applicant, TDHCA must receive the completed Application/Compliance Package (Exhibit 9 of the Texas Bootstrap Loan Program Manual) within five (5) business days of the date the registration was entered into the system.

TDHCA Office of Colonia Initiatives (OCI) staff will review the Application/Compliance Package to ensure that the Owner-Builder applicant meets all program rules and guidelines. The NOHP will be notified in writing in the form of a Deemed Eligible Letter, that the Owner-Builder applicant has been deemed eligible and that funds have been reserved for one (1) year from the date of issuance of a Deemed Eligible Letter (Form 10 of the Texas Bootstrap Loan Program Manual).

If TDHCA staff is unable to deem the Owner-Builder applicant eligible the NOHP will be notified in writing of the reason(s) by either a Notice of Deficiency Letter (Form 13 of the Texas Bootstrap Loan Program Manual) or Applicant Deemed Ineligible Letter (Form 12).

Incomplete Application/Compliance Packages may not be accepted. All incomplete packages may be returned to the NOHP and the reservation may be cancelled. The NOHP must resubmit a new reservation and the Application/Compliance Package to TDHCA in order to be reconsidered for funding.

Maximum reservations allowed at any given time: 10

Performance Benchmarks:

Once an Owner-Builder has been deemed eligible and funds have been reserved, depending on the type of loan being requested the NOHP must meet the following performance benchmarks.

If the Owner-Builder Applicant qualifies for the Texas Bootstrap Loan Program, the OCI will issue a deemed eligible letter (pre-approval) which reserves the funds (up to $30,000 per reservation) for twelve (12) months. The NOHP, in accordance with the Texas Bootstrap Loan Program Rules, will be given a 6 percent administration fee upon completion of the house and closing of each mortgage loan.

In an effort to expedite expenditures, the NOHP will be required to meet specific performance benchmarks on that home within twelve (12) months of the reservation. If the NOHP fails to meet the required benchmarks, the reservation will be subject to cancellation in accordance with the Loan Origination Agreement. TDHCA may choose to provide one forty-five (45) day extension due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHP's control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the reservation will be cancelled. In order to receive another reservation on the same Owner-Builder Applicant the NOHP will be instructed to submit an updated application to ensure that the Owner-Builder Applicant still meets all Texas Bootstrap Loan Program Rules and Guidelines.

Nonprofit organizations that have been certified as an NOHP and have executed the Loan Origination Agreement with TDHCA may begin submitting Owner-Builder loan applications to TDHCA.

Purchase Money Loan:

(1) Within ninety (90) days of the respective reservation date, the NOHP must have initiated the preconstruction process, which includes the homeownership education and counseling programs of the organization.

(2) Within one hundred eighty (180) days of the respective reservation date construction must have started on the unit; and

(3) Within one (1) year of the respective reservation date the unit must be 100 percent complete and the purchase money loan must have closed with the Owner-Builder Applicant.

Interim and Residential Construction Loans:

(1) Within ninety (90) days of the respective reservation date, the loan must close and construction must have started on the unit;

(2) Within one hundred eighty (180) days of the respective reservation date, the unit must be at 40 percent completion;

(3) Within two hundred seventy (270) days of the respective reservation date, the unit must be at 80 percent completion; and

(4) Within one (1) year of the respective reservation date, the unit must be 100 percent complete and the purchase money loan must have closed with the Owner-Builder Applicant.

TDHCA will begin accepting reservations immediately, and continue to accept reservations on an ongoing basis until such time as all funding has been committed.

The NOHP state certification application may be downloaded from TDHCA's web site located at **http://www.tdhca.state.tx.us/oci-docs/NOHPApp.doc**.

All interested parties are encouraged to participate in this program. For more information regarding this NOFA and the training please call Raul Gonzales with the Office of Colonia Initiatives at (800) 462-4251, visit the TDHCA's web-site at **http://www.tdhca.state.tx.us/oci/index.jsp** or e-mail your request to raul.gonzales@tdhca.state.tx.us.

TRD-200806018
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 18, 2008

HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Rental Production Program: Notice of Funding Availability (NOFA)

(1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $5,966,488 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDO) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

(2) Allocation of HOME Funds

(a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The funds are set aside for eligible CHDO and rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable housing development activities. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

(b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Applications submitted prior to 5:00 p.m. on August 25, 2008 were subject to the Regional Allocation Formula. Any funds not requested in an application received by 5:00 p.m. August 25, 2008, have collapsed into an open application cycle with funding available statewide and not subject to the RAF. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications for the statewide open application cycle will be accepted until 5:00 p.m. April 30, 2009.

(c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $4,000,000 per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents (The Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent.) but will be limited as follows:

Fair Market Rent Calculations

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. For rental housing developments, the Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan, in whole or part will be recommended.

(d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not ex-

ceed $75,000 in accordance with 10 TAC §53.47(a)(4). Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

(e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(f) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

(3) Eligible and Prohibited Activities

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34 and §53.50, which involve only the acquisition, rehabilitation or construction of affordable developments.

(b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

(c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

(d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

(4) Eligible and Ineligible Applicants

(a) The Department provides HOME CHDO funding to qualified non-profit organizations eligible for CHDO certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process; however, Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

(b) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300.

(c) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §49.5 of this title, excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(5) Matching Funds

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

(6) Rental Housing Development Affordability Requirements

(a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period, at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI; all remaining units must be affordable to persons earning 80% or less than the AMFI.

(b) Each development will have a two-tier affordability term.

(i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is twenty (20) years. For rehabilitation or acquisition of existing housing, the term is five (5) years if the HOME investment is less than $15,000 per unit; ten (10) years if the HOME investment is $15,000 to $40,000 per unit; and fifteen (15) years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds, and affordability.

(ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to thirty (30) years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is twenty (20) additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

(c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

(7) Site and Development Restrictions

(a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspec-

tion performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

(d) All of the current Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g) and (h) apply.

(e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

(8) Threshold Criteria

(a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

(b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37 of this title, pursuant to 10 TAC §53.45(c).

(c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

(d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

(i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

(ii) all neighborhood organizations whose defined boundaries include the location of the Development;

(iii) executive officer and Board President of the school district that covers the location of the Development;

(iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

(v) the State Representative and State Senator whose district covers the location of the Development.

(vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

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

(i) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants for rental housing development must target a minimum of 5% of the total units for individuals or families earning 30% or less of area median family income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

(ii) All units targeting Extremely Low Income households at 30% of area median income and 30% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents calculated annually by the Department and available on the Department's website (www.tdhca.state.tx.us). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance.

(iii) If the Applicant elects to restrict 10% of all units for households at or below 30% of AMFI and at least 50% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8, the Department may allow a forgivable loan only for those extremely and/or very low-income units. Developments layered with Housing Tax Credits are not eligible for this optional election unless the funds are deducted from eligible basis. Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.

(iv) Staff will not recommend to the Department's Governing Board any contingent payment loans except for applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must also meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and Guidelines described in 10 TAC §1.32.

(v) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum per-

centage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities as identified in section 2(c) of this NOFA.

(vi) All of the Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §49.9(h), excluding paragraphs (4)(J), (11), (12), (14)(G), and (15).

(vii) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

(9) Review Process

(a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

Phase Two will include a comprehensive review for financial feasibility. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Pursuant to the HOME Rule §53.42, if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

(c) A site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

(e) In accordance with §2306.082, Texas Government Code, and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(10) Application Submission

(a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2009. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA, please contact Cameron Dorsey at (512) 475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

(b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

(c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(d) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

(e) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

(f) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

(g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

(i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806059
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

HOME Investment Partnerships Program Contract for Deed Program: Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $9,280,000 in funding from the HOME Investment Partnerships Program for contract for deed conversions for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through the Department's deobligated HOME funds reserved for contract for deed conversions and the 2006, 2007, and 2008 allocations of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The funds are set-aside for eligible applicants proposing to provide assistance to eligible homebuyers for the acquisition or the acquisition and rehabilitation, new construction or reconstruction of properties for the purposes of converting an eligible contract for deed to homeownership. In accordance with Rider 6 of the Department's General Appropriations Act, all funds released under this NOFA are to be used for contract for deed conversion for families that reside in a colonia with household income at or below 60% of the Area Median Family Income (AMFI), as defined by HUD.

b) In accordance with §2306.111, Texas Government Code, these funds are not subject to the Regional Allocation Formula (RAF).

c) In accordance with 10 TAC §53.48, this NOFA will be an open application cycle and funding will be available on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis until all funds have been awarded or 5:00 p.m. on May 1, 2009, whichever occurs first, regardless of method of delivery. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet eligibility and minimum threshold criteria will not be considered for funding.

3) Limitation on Funds

a) Funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

b) The Department awards HOME funds to eligible organizations and the maximum award amount may not exceed $520,000, including administrative costs, per contract. Applicants may apply for additional funds of up to $520,000 under this NOFA if the applicant has successfully committed 100% of the project funds of the previous award funded under this NOFA. The maximum amount of funds that may be awarded per applicant is $1 million under this NOFA. The minimum HOME assistance amount per unit may not be less than $1,000 per HOME assisted unit. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilitation or reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

c) The contract term shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

(i) Six (6) months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(ii) Eight (8) months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted;

(iv) Sixteen (16) months, 100% of Household's Loans must be closed, if applicable;

(v) Twenty-two (22) months, 100% of construction must be complete for all Households to be assisted; and

(vi) Twenty-four (24) months, 100% funds drawn and 100% of match requirement supplied.

d) In accordance with 10 TAC §53.32(g), the maximum amount of assistance is the total of the acquisition, closing, and soft costs provided to an eligible household for a contract for deed conversion and is limited to $25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount; however, the Executive Director will not grant an exception to exceed $40,000 of assistance.

e) In accordance with 10 TAC §53.32(h), the maximum amount of assistance for rehabilitation to an eligible household for a contract for deed conversion is limited to the OCC Program Activity requirements in 10 TAC §53.31(g) as follows:

i) Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs; and,

ii) Rehabilitation that is not Reconstruction: $30,000.

f) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs of 4% of the total project costs for the entire Contract term. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85.

4) Eligible and Prohibited Activities

a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.31 and §53.32 and must involve contract for deed conversion activity.

b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

c) Funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

5) Eligible and Ineligible Applicants

a) Eligible applicants include nonprofit organizations, units of general local government, for-profit entities and public housing agencies.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME Program Rule, with the exception of applicants who have had funds deobligated for delays in completing their contractual requirements as described in §53.42(1). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

6) Matching Funds

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

7) Affordability Requirements

a) Applicants should be aware that there are minimum affordability periods necessary for HOME-assisted housing. The unit assisted must be the primary residence of the homebuyer. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. Awarded organizations will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department. Each loan to an assisted homebuyer must be payable to Department. Each loan for rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence.

b) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted homebuyer's principal residence, the remaining loan balance shall become due and payable.

c) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived.

The amount due will be based on the pro-rata share number of years of the remaining loan term.

d) In the event the home is sold (voluntary or involuntary), the assisted homebuyer will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

8) Site and Construction Restrictions

a) The property assisted must be located in a Colonia. Pursuant to 10 TAC, Chapter 53, a Colonia is defined as a geographic area that is located in a county some part of which is within 150 miles of the international border of this state that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

i) 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, Texas Water Code; or

ii) has the physical and economic characteristics of a Colonia, as determined by the Department.

b) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable local codes, rehabilitation standards, ordinances, zoning ordinances, energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

c) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

9) Threshold Criteria

The following threshold criteria listed in this subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise:

a) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $50,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment must be included in the Applicant's resolution.

b) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming a person authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

c) Colonia Status Requirement: Applicants are required to submit support documentation verifying that the targeted Colonia(s) in which the proposed households will be assisted is registered with the Office of the Attorney General or the Secretary of the State as a Colonia. Information regarding Colonia status is available online through the Office of the Attorney General at http://maps.oag.state.tx.us/colgeog/ and through the Secretary of the State at http://www.sos.state.tx.us/border/colonias/reg-colonias/index.shtml

d) Match: Applicants are required to provide eligible match in the amount of 5% or more of the requested project funds. Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide. Match is a threshold requirement.

10) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date". Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to the HOME Rule §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

c) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the finan-

cial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

d) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.

e) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

11) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on May 1, 2009. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

b) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

c) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

d) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

e) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. §2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

f) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Program Activities. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806057
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

HOME Investment Partnerships Program Rental Housing Development Program: Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $11,459,907 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ("HOME Rules") in effect at the time application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been set-aside for rental housing development activities. At least $2,000,000 of these funds are set-aside for rental development proposals which involve the acquisition and rehabilitation of existing affordable housing that is at-risk of losing the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. The remaining funds will be available to all eligible applicants for rental development activities. Applications

for the Preservation Set-Aside must include evidence that any stipulation to maintain affordability in the contract granting the subsidy is at-risk of expiring, or that the federally insured mortgage on the Development is eligible for prepayment, within the next twenty-four (24) months from the date of application submission. An Application for a Development that includes the demolition of the existing units which have received any of the previously listed benefits will not qualify as a Preservation Development unless the redevelopment will include the same site and is supplemented with HOPE VI funding or funding from the Local Housing Authority's capital grant fund. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Applications submitted prior to 5:00 p.m. on August 25, 2008 were subject to the Regional Allocation Formula. Any funds not requested in an application received by 5:00 p.m. August 25, 2008, have collapsed into an open application cycle with funding available statewide and not subject to the RAF. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications for the statewide open application cycle will be accepted until 5:00 p.m. April 30, 2009.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents1 (The Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent.) but will be limited as follows:

Table 1: RHD Fair Market Rent Calculations

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan, in whole or part, will be recommended.

d) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

e) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

3) Eligible and Prohibited Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34, which involve only the acquisition, rehabilitation or construction of affordable rental developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2009 State of Texas Consolidated Plan One-Year Action Plan.

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §49.5(a) excluding paragraphs (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is twenty (20) years. For rehabilitation or acquisition of existing housing, the term is five (5) years if the HOME investment is less than $15,000 per unit; ten (10) years if the HOME investment is $15,000 to $40,000 per unit; and fifteen (15) years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to thirty (30) years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is twenty (20) additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601-3619). Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), 10 TAC §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514 of the Texas Government Code.

d) All of the current Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities fourteen (14) days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished;

v) the State Representative and State Senator whose district covers the location of the Development; and

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

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

i) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA §515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

ii) If the Applicant elects to restrict 10% of all units for households at or below 30% of AMFI and at least 50% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source with the exception of developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8, the Department may allow a forgivable loan only for those extremely and/or very low-income units. Developments layered with Housing Tax Credits are not eligible for this optional election unless the funds are deducted from eligible basis. Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.

iii) Staff will not recommend to the Department's Governing Board any contingent payment loans except for applications with first lien debt that is insured by HUD or the Federal Housing Administration (FHA) or for applications with other lenders with which the Department has a Memorandum of Agreement permitting such contingent payment debt structures. All contingent payment loans must also meet the minimum debt coverage ratio requirements in the Real Estate Analysis Rules and Guidelines described in 10 TAC §1.32.

iv) All units targeting Extremely Low Income households at 30% of area median income and 30% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents calculated annually by the Department and available on the Department's website (www.tdhca.state.tx.us). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance.

v) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities as identified in section (2)(c) of this NOFA.

vi) All of the Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §49.9(h), excluding paragraphs (4)(J), (11), (12), (14)(G) and (15).

vii) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty-five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis

(REA) Division consistent with 10 TAC §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty-five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to the QAP and 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

c) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 of the Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2009. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Cameron Dorsey at (512) 475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.

b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

e) The application consists of several parts as described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

f) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806058
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

HOME Investment Partnerships Program 2008 Single Family (Owner-Occupied Housing Assistance, Tenant-Based Rental Assistance, and Homebuyer Assistance Programs): Notice of Funding Availability (NOFA)

1) Summary.

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of $23,034,118 in funding from the HOME Investment Partnerships Program (HOME) funds for single family housing programs including owner-occupied housing assistance, homebuyer assistance, and tenant-based rental assistance to assist low income Texans. As published in the 2008 State of Texas Consolidated Plan One-Year Action Plan, $16,123,882 is available for the Owner-Occupied Housing Assistance (OCC) Program, $3,455,118 is available for the Homebuyer Assistance (HBA) Program, and $3,455,118 is available for the Tenant-Based Rental Assistance (TBRA) Program.

b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of Funds.

a) These funds are made available through the Department's 2008 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD) and may also include uncommitted, deobligated and program income HOME funds. The funds are set-aside for eligible applicants proposing to provide assistance to eligible homeowners in need of rehabilitation or reconstruction of their primary residence, homebuyers for the acquisition including downpayment and closing costs toward the purchase of a home, and households seeking tenant-based rental assistance. Households assisted with HOME funds must be at or below 80% of the Area Median Family Income (AMFI), as defined by HUD.

b) In accordance with Texas Government Code §2306.111, housing funds awarded in the HOME Program must be allocated utilizing the Regional Allocation Formula (RAF) developed by the Department. Funds are allocated for each Program Activity to each Uniform State Service Region and rural and urban area types.

c) In accordance with 10 TAC §53.48(a) this NOFA will be an open application cycle. Funds will first be available for HOME Program Activities, specified in this NOFA, utilizing the RAF for each activity, on a first-come, first-served basis. Applications will be accepted by the Department on an on-going basis utilizing the funds allocated by the RAF until the earlier of the request of all funds or 5:00 p.m. Wednesday, October 15, 2008, regardless of method of delivery.

d) On Thursday, October 16, 2008 funds for each HOME Program Activity not requested under the open cycle utilizing the RAF will be made available statewide (excluding PJs) in any Uniform State Service Region. Funds will remain set-aside within each HOME Program Activity. Applications will be accepted by the Department on an on-going basis until the earlier of the request of all funds or 5:00 p.m. Thursday, January 15, 2009, regardless of method of delivery.

e) On Friday, January 16, 2009 any funds not requested under the statewide, Program Activity specific open cycle, will be made available in any Uniform State Service Region (excluding PJs) for any eligible HOME Program Activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until the earlier of the award of all funds or 5:00 p.m. Thursday, April 30, 2009, regardless of method of delivery.

f) Requirements of the Regional Allocation Formula and 10 TAC §53.48(a) will be utilized in prioritizing funding recommendations. Applicants may apply for the maximum allowed in each activity even though the amount of available funds utilizing the RAF may be less. However, only the maximum allowable under the RAF will be recommended for award during the RAF period.

3) Limitation on Funds.

a) Funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

b) The Department awards HOME funds to eligible entities and the maximum award amount may not exceed $416,000, including administrative costs, for Owner-Occupied Housing Assistance,

$312,000, including administrative costs, for Homebuyer Assistance, and $336,000, including administrative costs, for Tenant-Based Rental Assistance. Up to $520,000, including administrative costs, may be awarded to Homebuyer Assistance applicants whose Service Area includes multiple counties within a Uniform State Service Region. An Applicant may submit an Application to apply for additional funding as long as the Applicant is 100% committed on their current contract for the same activity.

c) With the exception of Tenant-Based Rental Assistance, the minimum HOME assistance amount per unit may not be less than $1,000 per HOME assisted unit. The per-unit subsidy may not exceed the per-unit dollar limits established by the U.S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the housing is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilitation or reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

d) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs. The award amount for administrative costs shall not exceed the amount allowed per 10 TAC §53.85. Administrator must use funds for Administrative costs in accordance with 24 CFR §92.207. For the OCC and HBA Program Activities, funds for Administrative Costs cannot exceed 4% of the total project costs for the entire contract term. For the TBRA Program Activity, funds for Administrative Costs cannot exceed 4% of the total project funds per year of the Contract term.

e) In accordance with 10 TAC §53.72, before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

4) Eligible and Prohibited Activities.

a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.31 for OCC, §53.32 for HBA, and §53.33 for TBRA.

b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

5) Eligible and Ineligible Applicants.

a) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, Public Housing Authorities (PHAs), and for-profit entities.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

6) Matching Funds.

Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

7) Affordability Requirements.

a) Applicants should be aware that there are minimum affordability periods necessary for HOME-assisted housing. The unit assisted must be the primary residence of the homebuyer. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. Awarded entities will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department. Each loan to an assisted homebuyer and homeowners must be payable to Department. Each loan for reconstruction or rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property and must be fully executed before any construction activities commence.

b) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

c) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

d) In the event the home is sold (voluntary or involuntary); the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

8) Site and Construction Restrictions.

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514 of the Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

b) At the completion of the assistance, all properties must meet the International Residential Code and local building codes. If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514 of the Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

c) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

d) Rental units secured though HOME assistance must be inspected prior to occupancy and must comply with Housing Quality Standards (HQS) established by HUD in 24 CFR Part 92.

9) Owner-Occupied Housing Assistance (OCC).

a) A total of $16,123,882 in funding released under this NOFA may be used to administer an Owner-Occupied Housing Assistance Program to provide eligible households with loans for the rehabilitation or reconstruction of existing owner-occupied housing and earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD. As defined in 10 TAC §53.31(d)(1), the home must be the principal residence of the homeowner.

b) Table one shows the allocation of funds to the 13 State Service Regions and the corresponding rural and urban distribution within each region.

Table 1. OCC Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	910,061	5.6%	909,892	100.0%	169	0.0%
2	Abilene	597,429	3.7%	584,786	97.9%	12,643	2.1%
3	Dallas/Fort Worth	2,851,824	17.7%	875,549	30.7%	1,976,275	69.3%
4	Tyler	2,049,849	12.7%	1,598,672	78.0%	451,177	22.0%
5	Beaumont	947,455	5.9%	858,034	90.6%	89,421	9.4%
6	Houston	1,145,014	7.1%	469,856	41.0%	675,158	59.0%
7	Austin/Round Rock	685,992	4.3%	386,245	56.3%	299,747	43.7%
8	Waco	756,726	4.7%	402,488	53.2%	354,238	46.8%
9	San Antonio	823,099	5.1%	516,486	62.7%	306,613	37.3%
10	Corpus Christi	1,166,337	7.2%	966,385	82.9%	199,952	17.1%
11	Brownsville/Harlingen	2,833,963	17.6%	2,054,998	72.5%	778,965	27.5%
12	San Angelo	818,629	5.1%	571,332	69.8%	247,297	30.2%
13	El Paso	537,503	3.3%	298,381	55.5%	239,122	44.5%
	Total	**$16,123,882**	**100.0%**	**$10,493,105**	**65.1%**	**$5,630,777**	**34.9%**

c) In accordance with 10 TAC §53.47(a)(1), the maximum award amount for OCC shall not exceed $416,000, including administrative costs, per Application. In accordance with 10 TAC §53.85 up to 4% of the total project costs may be requested for administrative costs.

d) Owner-Occupied Housing Assistance to a household is provided in the form of a loan and in accordance with 10 TAC §53.31(g), the maximum amount of assistance is the total of construction costs and soft costs provided to an eligible household. The total construction costs are limited to:

i) Rehabilitation that is Reconstruction: The lesser of $73.00 per square foot or $80,000, if the Reconstruction includes actual costs for an aerobic septic system and/or demolition. If the Reconstruction includes costs for an aerobic septic system and/or demolition, the total construction costs cannot exceed $73.00 per square foot exclusive of the aerobic septic system and demolition costs; and,

ii) Rehabilitation that is not Reconstruction: $30,000

e) In accordance with 10 TAC §53.73(a)(1), the contract term for OCC Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

ii) Eight (8) months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted;

iv) Eighteen (18) months, 100% of Household's Loans must be closed, if applicable;

v) Twenty-two (22) months, 100% of construction must be complete for all Households to be assisted; and

vi) Twenty-four (24) months, 100% funds drawn and 100% of match requirement supplied.

10) A minimum threshold score of 25 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Affordable Housing Needs Score: Points range from zero (0) to seven (7) as published by the Department. Maximum 7 points.

ii) Match: Per 24 CFR §92.218, the Department will recognize eligible forms of matching contributions made from nonfederal resources. The following table will be used to determine match requirement and associated points:

Table 2. OCC Housing Program Required Community Match Contributions

City Population	County Population	Required Match % of Project Funds Requested	Points	Additional Points
< 3000	< 20,000	5%	10	10 points for each additional percent of match provided
3,000 – 5,000	20,000 – 75,000	10%	10	7 points for each additional percent of match provided
> 5,000	> 75,000	12.5%	10	5 points for each additional percent of match provided

iii) Income Targeting: Maximum 20 points. In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. The following table will be used to determine income targeting requirements and associated points. In accordance with the Housing Assistance Rider of the Department's Legislative Appropriation, in order to meet the 30% and below AMFI goal, Applicants, if awarded, may use the state average median family income to determine income eligibility for eligible households living in those counties where the area median family income is lower than the state average median family income.

Table 3. Point Incentives for Income Targeting

Income Target	Points
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

iv) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $120,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution and budget.

v) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application submission date.

vi) Description of Demand: All applicants must submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations, assumptions, and pictures of housing stock must be included.

11) Homebuyer Assistance (HBA).

a) Approximately $3,455,118 of HOME Funds released under this NOFA shall be used to administer a Homebuyer Assistance Program, providing downpayment and closing cost assistance (including soft costs) to eligible first time homebuyers for the acquisition of affordable single family housing.

b) Table four shows the allocation of funds to the 13 State Service Regions and the corresponding rural and urban distribution within each region.

Figure:

Table 4. HBA Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	195,013	5.6%	194,977	100.0%	36	0.0%
2	Abilene	128,020	3.7%	125,311	97.9%	2,709	2.1%
3	Dallas/Fort Worth	611,105	17.7%	187,618	30.7%	423,488	69.3%
4	Tyler	439,253	12.7%	342,573	78.0%	96,681	22.0%
5	Beaumont	203,026	5.9%	183,864	90.6%	19,162	9.4%
6	Houston	245,360	7.1%	100,683	41.0%	144,677	59.0%
7	Austin/Round Rock	146,998	4.3%	82,767	56.3%	64,232	43.7%
8	Waco	162,156	4.7%	86,247	53.2%	75,908	46.8%
9	San Antonio	176,378	5.1%	110,676	62.7%	65,703	37.3%
10	Corpus Christi	249,929	7.2%	207,082	82.9%	42,847	17.1%
11	Brownsville/Harlingen	607,278	17.6%	440,357	72.5%	166,921	27.5%
12	San Angelo	175,421	5.1%	122,428	69.8%	52,992	30.2%
13	El Paso	115,179	3.3%	63,939	55.5%	51,240	44.5%
	Total	**$3,455,118**	**100.0%**	**$2,248,523**	**65.1%**	**$1,206,595**	**34.9%**

c) In accordance with 10 TAC §53.47(a)(1), the maximum award amount for HBA shall not exceed $312,000, including administrative costs, per Application; however, up to $520,000, including administrative costs, may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region. In accordance with 10 TAC §53.85(a)(1), for the HBA Program Activities, funds for Administrative costs cannot exceed 4% of the total project costs for the entire Contract term.

d) In accordance with 10 TAC §53.32(e), the maximum amount of assistance is the total of the downpayment and closing cost assistance and soft costs provided to an eligible household. The total amount of downpayment and closing cost assistance is limited to $20,000.

e) In accordance with 10 TAC §53.32(m), the following first lien purchase loan requirements are imposed for households receiving Homebuyer Assistance:

i) No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;

ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

iii) No Subprime Mortgage Loans are allowed;

iv) An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and,

v) The debt to income ratio (back-end ratio) may not exceed 45%.

f) HBA assistance will be in the form of a 0% interest 5 or 10 year deferred forgivable loan contingent upon the total amount of assistance, creating a 2nd or 3rd lien with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

g) In accordance with 10 TAC §53.73(a)(2), the contract term for the HBA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;

ii) Twelve (12) months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

iii) Eighteen (18) months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and

iv) Twenty-four (24) months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.

h) A minimum threshold score of 15 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Affordable Housing Needs Score: Points range from zero (0) to seven (7), as published by the Department. Maximum 7 points.

ii) Match: the following table will be used to determine match requirement and associated points:

Table 5. HBA Program Required Community Match Contributions

Required Match % of Project Funds Requested	Points	Additional Points
5%	10	10 points for each additional percent of match provided

iii) Income Targeting: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted The following table will be used to determine income targeting requirements and associated points. Maximum 20 points.

Table 6. Point Incentives for Income Targeting

Income Target	Points
0% to 29.99% of units at 60% AMFI	3
30% to 59.99% of units at 60% AMFI	7
60% to 100% of units at 60% AMFI	10

iv) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $60,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

v) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

vi) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

vii) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of eight (8) hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

12) Tenant-Based Rental Assistance (TBRA).

a) Approximately $3,455,118 of HOME funds released under this NOFA shall be used to administer a Tenant-Based Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits to tenants earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD. In accordance with 24 CFR §92.216, not less than 90% of the households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD.

b) Table seven shows the allocation of funds to the 13 State Service Regions and the corresponding rural and urban distribution within each region.

Table 7. TBRA. Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	195,013	5.6%	194,977	100.0%	36	0.0%
2	Abilene	128,020	3.7%	125,311	97.9%	2,709	2.1%
3	Dallas/Fort Worth	611,105	17.7%	187,618	30.7%	423,488	69.3%
4	Tyler	439,253	12.7%	342,573	78.0%	96,681	22.0%
5	Beaumont	203,026	5.9%	183,864	90.6%	19,162	9.4%
6	Houston	245,360	7.1%	100,683	41.0%	144,677	59.0%
7	Austin/Round Rock	146,998	4.3%	82,767	56.3%	64,232	43.7%
8	Waco	162,156	4.7%	86,247	53.2%	75,908	46.8%
9	San Antonio	176,378	5.1%	110,676	62.7%	65,703	37.3%
10	Corpus Christi	249,929	7.2%	207,082	82.9%	42,847	17.1%
11	Brownsville/Harlingen	607,278	17.6%	440,357	72.5%	166,921	27.5%
12	San Angelo	175,421	5.1%	122,428	69.8%	52,992	30.2%
13	El Paso	115,179	3.3%	63,939	55.5%	51,240	44.5%
	Total	**$3,455,118**	**100.0%**	**$2,248,523**	**65.1%**	**$1,206,595**	**34.9%**

c) In accordance with 10 TAC §53.47(a)(1) the maximum award amount for TBRA shall not exceed $336,000, including administrative costs, per Application. In accordance with §53.85(a)(1), for the TBRA program activity, funds for administrative costs cannot exceed 4% of the total project funds per year of the Contract term. In accordance with 10 TAC §53.73(a)(3) the contract term for TBRA shall not exceed thirty-six (36) months, however, individual household assistance is limited to twenty-four (24) months.

d) Through the TBRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed twenty-four (24) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

e) As per 10 TAC §53.33, the Household must comply with the following initial eligibility requirements: participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and meet all other eligibility requirements.

f) As defined in 10 TAC §53.33(d) the rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and must comply with Housing Quality Standards established by HUD.

g) In accordance with 10 TAC §53.73(a)(3), the contract term for the TBRA Program shall not exceed thirty-six (36) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

ii) Nine (9) months, application intake complete for 75% for Households to be assisted;

iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

iv) Eighteen (18) months, 100% of funds already committed and 35% of funds drawn;

v) Twenty-four (24) months, 100% of funds already committed and 50% of funds drawn; and

vi) Thirty-six (36) months, 100% of funds already committed and 100% of funds drawn.

h) A minimum threshold score of 15 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Affordable Housing Needs Score: Points range from zero (0) to seven (7), as published by the Department. Maximum 7 points.

ii) Income Targeting - Maximum 20 points: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. The following table will be used to determine income targeting requirements and associated points.

In accordance with the Housing Assistance Rider of the Department's Legislative Appropriation, in order to meet the 30% and below AMFI goal, Applicants, if awarded, may use the state average median family income to determine income eligibility for eligible households living

in those counties where the area median family income is lower than the state average median family income.

Table 8. Point Incentives for Income Targeting

Income Target	Points
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

iii) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

iv) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, source of funds for match obligation and match dollar amount, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six (6) months preceding the application deadline date.

v) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

vi) TBRA Self Sufficiency Program: It will be a threshold requirement for each Applicant to submit a proposed detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent housing by the end of the 24-month rental assistance contract term.

(1) The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

(a) A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the 24-month rental assistance.

(b) If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

(c) Specific housing goals that will be completed on or before the end of the 24-month assistance period include: finding permanently subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

13) Review Process.

a) Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date." Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

i) The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

ii) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

c) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not

obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

d) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

e) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

f) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

g) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

14) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Thursday, April 30, 2009, regardless of method of delivery.

b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Questions regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Per §2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

h) Application Workshop: the Department will present application workshops in locations throughout the State which will provide an overview of the HOME Program Activities eligible under this NOFA and will also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us

i) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

j) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806063
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

♦ ♦ ♦

HOME Investment Partnerships Program 2008 Single Family Persons with Disabilities: Notice of Funding Availability (NOFA)

1) Summary.

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of $1,500,000 in funding from the HOME Investment Partnerships Program (HOME) 2008 allocation for single family housing programs including Homebuyer Assistance (HBA) and Tenant-Based Rental Assistance (TBRA) to assist low income, persons with disabilities. For the first one hundred eighty (180) days of this NOFA, $750,000 in funding will be available for the HBA activity and $750,000 in funding will be available for the TBRA program activity. Funding will be available in any area of the state including Participating Jurisdictions (PJs). After the first one hundred eighty (180) day cycle, funds will be available on a first-come, first-served basis to either activity in any area of the state (including PJs).

b) The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of Funds.

a) These funds are made available through the Department's 2008 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD). The funds are set-aside for eligible applicants proposing to provide assistance to eligible homebuyers for the acquisition or acquisition and rehabilitation for accessibility of affordable single family housing and households seeking rental subsidies including security and utility deposits through tenant-based rental assistance. Households assisted with HOME funds must be at or below 80% of the Area Median Family Income (AMFI) and meet the definition of a person with disability, as defined by HUD.

b) In accordance with 10 TAC §53.48(a) this NOFA will be an open application cycle on statewide first-come, first-served basis. TBRA funds will be available for the first ninety (90) days only to those applicants proposing to assist persons transitioning from an institution and at least 50% of the total households proposed must be targeted to persons transitioning from an institutional setting into a community placement or community setting. Applications will be accepted by the Department on an on-going basis until all funds have been requested or 5:00 p.m. Friday, December 19, 2008, regardless of method of delivery.

c) On Monday, December 22, 2008 funds not requested under the first 90-day cycle will be made available to any eligible applicant under each activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until all funds have been requested or 5:00 p.m. Friday, March 20, 2009, regardless of method of delivery.

d) On Monday, March 23, 2009 any remaining funds not requested under either the HBA or TBRA set-aside will be made available to either activity specified in this NOFA. Applications will be accepted by the Department on an on-going basis until all funds have been requested or 5:00 p.m. Friday, May 29, 2009.

3) Limitation on Funds.

a) Funds are eligible for use in a Participating Jurisdiction (PJ) as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

b) The Department awards HOME funds to eligible organizations and the maximum award amount may not exceed $318,000, including administrative costs, for Homebuyer Assistance and $318,000, including administrative costs, for Tenant-Based Rental Assistance. Up to $530,000, including administrative costs, may be awarded to Homebuyer Assistance applicants whose Service Area includes multiple counties within a Uniform State Service Region. An applicant may submit an Application to apply for additional funding as long as the Applicant is 100% committed on their current contract for the same activity.

c) With the exception of Tenant-Based Rental Assistance, the minimum amount of HOME assistance per unit is $1,000. The per-unit subsidy may not exceed the per-unit dollar limits established by the U.S. Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The purchase price of the housing unit, plus the value of the rehabilitation if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD §203(b) Limits.

d) Each applicant that is awarded HOME funds may also be eligible to receive funding for administrative costs. In accordance with §53.85(a)(1), for Program Activities that are serving Persons with Disabilities, funds for Administrative Costs cannot exceed 6% of the total project costs for the entire Contract term.

e) In accordance to §53.72(a), before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory implementation training required by the Department as a condition of receiving a HOME award and Contract.

4) Eligible and Prohibited Activities.

a) Eligible activities include those permissible under the federal HOME Final Rule at 24 CFR §92.205 and the Department's HOME Program Rule at 10 TAC §53.32 for HBA and §53.33 for TBRA.

b) Prohibited activities include those at 24 CFR §92.214 and 10 TAC §53.37.

5) Eligible and Ineligible Applicants.

a) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, Public Housing Authorities (PHAs), and for-profit entities.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME Program Rule. Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

6) Affordability Requirements.

a) Applicants should be aware that there are minimum affordability periods necessary for HOME-assisted housing. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. Awarded organizations will provide the HOME assistance to the homebuyer in the form of a loan. Each loan will be in the form of a zero percent (0%) interest, deferred forgivable loan with a term based on the total amount of assistance provided and in accordance with 24 CFR §92.254. All loans to assisted homebuyers must be evidenced by loan documents

provided by the Department. Each loan to an assisted homebuyer must be payable to Department.

b) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

c) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

d) In the event the home is sold (voluntary or involuntary), the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. A copy of the HUD closing statement must be provided.

7) Site and Construction Restrictions.

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, of the Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet energy efficiency standards established by §2306.187 of the Texas Government Code, and energy standards as verified by RESCHECK, in accordance with the Final Rule.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable state and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Rental units secured though HOME assistance must be inspected prior to occupancy, inspected annually, and must comply with Housing Quality Standards (HQS) established by HUD in 24 CFR Part 92.

8) Homebuyer Assistance (HBA).

a) During the first one hundred eighty (180) days of this NOFA, approximately $750,000 of the HOME funds released under this NOFA will be set-aside for Homebuyer Assistance. This program activity may be used to provide assistance to eligible first time homebuyers for the acquisition or acquisition with rehabilitation of affordable single family housing by providing downpayment and closing cost assistance (including soft costs). If needed, rehabilitation must be provided for required accessibility modifications. Eligible homebuyers may receive loans up to $35,000 for downpayment, closing costs and rehabilitation (including soft costs). A maximum of $15,000 of the $35,000 loan may be used for downpayment and closing costs (including soft costs). The balance of the loan can be used for required accessibility modifications but cannot exceed $20,000.

b) In accordance with 10 TAC §53.47(a)(1), the maximum award amount for HBA shall not exceed $318,000, including administrative costs. However, up to $530,000, including administrative costs may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region.

c) As defined in 10 TAC §53.32(e), the maximum amount of assistance to an eligible Household for downpayment and closing cost assistance (including soft costs) is $15,000 for Persons with Disabilities. As defined in 10 TAC §53.32(f), the maximum amount of assistance for rehabilitation that is not reconstruction is the total of construction costs and soft costs provided to an eligible household that is also using funds for acquisition, and is limited to $20,000. Rehabilitation assistance must be utilized for accessibility modifications to the unit.

d) The following first lien purchase loan requirements are imposed for households receiving Homebuyer Assistance:

i) No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;

ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

iii) No subprime mortgage loans are allowed;

iv) An origination fee and any other fee associated with the mortgage loan may not exceed 2% of the loan amount; and

v) The income ratio (back-end ratio) may not exceed 45%.

e) HBA assistance will be in the form of a 0% interest, five (5) or ten (10) year deferred, forgivable loan depending on the amount of assistance, creating a 2nd or 3rd lien with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

f) In accordance with 10 TAC §53.73(a)(2), the contract term for the HBA Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (60 months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;

ii) Twelve (12) months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

iii) Eighteen (18) months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and

iv) Twenty-four (24) months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.

g) A minimum threshold score of 12 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Affordable Housing Needs Score: Points range from zero (0) to seven (7), as published by the Department. Maximum 7 points.

ii) Income Targeting: In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted The following table will be used to determine income targeting requirements and associated points. Maximum 10 points.

Table 1. Point Incentives for Income Targeting

Income Target	Points
0% to 29.99% of units at 60% AMFI	3
30% to 59.99% of units at 60% AMFI	7
60% to 100% of units at 60% AMFI	10

iii) Experience Providing Services to Persons with Disabilities: Applicants must have at least five (5) or more years providing services specifically targeting the needs of persons with disabilities as evidenced by previous contracts with funding entities for these services. To satisfy the requirement for this category, applicant may provide evidence of a partnership with an entity or organization that meets the requirement. Maximum 5 points.

iv) Experience Providing Homebuyer Assistance Service: Applying entity must have at least two (2) years experience providing homebuyer assistance services as evidenced by current or previous contracts with funding entities for these services. To satisfy the requirement for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement. Maximum 5 points.

v) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least $60,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution.

vi) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application submission date.

vii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

viii) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of eight (8) hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

ix) Plan for Identifying Accessibility needs of the Homebuyer. Applicant must submit a plan that clearly describes the process and expertise to be used in determining the accessibility needs of the homebuyer. The plan should include resumes of qualified/experienced staff or proposed agreement with a qualified/experienced third party company or agency.

9) Tenant-Based Rental Assistance (TBRA).

a) During the first one hundred eighty (180) days of this NOFA, approximately $750,000 of HOME Funds released under this NOFA will be set-aside for Tenant-Based Rental Assistance. This program activity may be used to provide eligible households rental subsidies, including security and utility deposits. In accordance with 24 CFR §92.216, not less than 90% of the households assisted with respect to TBRA or rental units, must have incomes at or below 60% of the AMFI, as defined by HUD.

b) During the first ninety (90) days of this NOFA, only applicants committing at least 50% of the proposed households to be assisted to persons transitioning from an institutional setting into a community placement or community setting may apply. After the first ninety (90) days, funds will be made available to any applicant under the TBRA set-side.

c) In accordance with 10 TAC §53.47(a)(1) the maximum award amount for TBRA shall not exceed $318,000 per Applicant. In accordance with 10 TAC §53.73(3) the contract term for TBRA shall not exceed thirty-six (36) months, however, individual household assistance is limited to twenty-four (24) months per Household per Contract.

d) Through the TBRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed twenty-four (24) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

e) In accordance with 10 TAC §53.33, the household must comply with the following initial eligibility requirements: participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; meet the definition of persons with disabilities as defined by HUD; and meet all other eligibility requirements.

f) As defined in 10 TAC §53.33(d) the rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and re-inspected annually, and must comply with Housing Quality Standards established by HUD.

g) In accordance with 10 TAC §53.73(a)(3), the contract term for the TBRA Program shall not exceed 36 months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

ii) Nine (9) months, application intake complete for 75% for Households to be assisted;

iii) Twelve (12) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

iv) Eighteen (18) months, 100% of funds already committed and 35% of funds drawn;

v) Twenty-four (24) months, 100% of funds already committed and 50% of funds drawn; and

vi) Thirty-six (36) months, 100% of funds already committed and 100% of funds drawn.

h) A minimum threshold score of 10 is required in order to be considered for funding. The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Affordable Housing Needs Score: Points range from zero (0) to seven (7), as published by the Department. Maximum 7 points.

ii) Income Targeting: Maximum 20 points. In order to meet its annual goal of assisting very low to extremely low income families, the Department incentivizes application points for income targeting of households assisted. The following table will be used to determine income targeting requirements and associated points.

In accordance with the Housing Assistance Rider of the Department's Legislative Appropriation, in order to meet the 30% and below AMFI goal, Applicants, if awarded, may use the state average median family income to determine income eligibility for eligible households living in those counties where the area median family income is lower than the state average median family income.

Table 2. Point Incentives for Income Targeting

Income Target	Points
0% to 29.99 % of units at 60% AMFI	1
30% to 59.99 % of units at 60% AMFI	3
60% to 100 % of units at 60% AMFI	5
0% to 29.99% of units at 30% AMFI	+6
30% to 59.99% of units at 30% AMFI	+11
60% to 100% of units at 30% AMFI	+15

iii) Experience Providing Services to Persons with Disabilities: Applicants must have at least five (5) or more years providing services specifically targeting the needs of persons with disabilities as evidenced by previous contracts with funding entities for these services. To satisfy the requirement for this category, applicant may provide evidence of a partnership with an entity or organization that meets the requirement. Maximum 5 points.

iv) Experience Providing Rental Voucher Services: Applying entity must have at least two (2) years experience providing rental voucher services as evidenced by current or previous contracts with funding entities for these services. To satisfy the requirement for this category, applicant may provide evidence of a partnership with an entity or organization that meets this requirement. Maximum 5 points.

v) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution.

vi) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application submission date.

vii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

viii) TBRA Self Sufficiency Program: It will be a threshold requirement for each applicant to submit a proposed detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent affordable housing by the end of the twenty-four (24) month rental assistance contract term.

(1) The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

(a) A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the twenty-four (24) month rental assistance.

(b) If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

(c) Specific housing goals that will be completed on or before the end of the twenty-four (24) month assistance period include: finding permanently subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

10) Review Process.

a) Pursuant to 10 TAC §53.48(a), each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits as applicable. Applications will continue to be prioritized for funding based on their "received date". Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

i) The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies within 45 days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board by the Committee.

ii) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has been completely reviewed. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed

b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency.

c) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application

d) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

e) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

f) In accordance with §2306.082, Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154 of the Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17

g) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

11) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Friday, May 29, 2009, regardless of method of delivery.

b) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Question regarding this NOFA should be addressed to:

HOME Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HOME@tdhca.state.tx.us

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Application Submission Procedures Manual (ASPM). All scanned copies must be scanned in accordance with the guidance provided in the ASPM.

e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to 10 TAC Chapter 53, the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Per §2306.147(b), Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

h) Application Workshop: the Department will present application workshops in locations throughout the State which will provide an overview of the HOME Program Activities eligible under this NOFA and will also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us

i) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

j) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME Division

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME Division

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200806062
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

Notice to Public and to All Interested Mortgage Lenders: Mortgage Credit Certificate Program

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low and moderate income first-time homebuyers purchase a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described below may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed $2,000. In order to qualify to receive a credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that credit certificates remain available under the Program. No credit certificates will be issued prior to ninety (90) days from the date of publication of this notice nor after the date that all of the credit certificate amount has been allocated to homebuyers and in no event later than the date permitted by federal tax law.

In order to satisfy the eligibility requirements for a certificate under the Program, (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas or in certain cases permitted under applicable provisions of the Internal Revenue Code) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Internal Revenue Code); (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences or in certain cases permitted under applicable provisions of the Internal Revenue Code) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage (except in certain cases permitted under applicable provisions of the Internal Revenue Code). Pursuant to the Gulf Opportunity Zone Act of 2005, residences in certain areas affected by Hurricane Rita are treated as targeted area residences. Pursuant to the Housing and Economic Recovery Act of 2008, areas declared by the President as disaster areas are not subject to the three-year requirement and are treated as targeted area residences for some purposes. To obtain additional information on the Program, including the boundaries of current targeted areas and federal disaster areas, as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy), please contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; telephone (512) 475-0277.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Cathy Gutierrez at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-0277. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of §25 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation §1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-200806053

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 19, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of MERRILL LYNCH LIFE INSURANCE COMPANY to TRANSAMERICA ADVISORS LIFE INSURANCE COMPANY, a foreign life company. The home office is in Little Rock, AR.

Application to change the name of AMCOMP PREFERRED INSURANCE COMPANY to EMPLOYERS PREFERRED INSURANCE COMPANY, a foreign fire and casualty company. The home office is in North Palm Beach, FL.

Application to change the name of AMCOMP ASSURANCE INSURANCE COMPANY to EMPLOYERS ASSURANCE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in North Palm Beach, FL.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200806048
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 19, 2008

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Texas Lottery Commission

Instant Game Number 1137 "3's a Charm"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1137 is "3'S A CHARM". The play style is "Row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1137 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1137.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: HORSESHOE SYMBOL, CLOVER SYMBOL, 3 SYMBOL, STAR SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $100 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1137 - 1.2D

PLAY SYMBOL	CAPTION
HORSESHOE SYMBOL	
CLOVER SYMBOL	
3 SYMBOL	
STAR SYMBOL	
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$100	ONE HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $6.00, $9.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $300.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1137), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1137-0000001-001.

K. Pack - A pack of "3'S A CHARM" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "3'S A CHARM" Instant Game No. 1137 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 "3'S A CHARM" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals three "horseshoe" symbols, three "clover" symbols or three "star" symbols in any one row, column or diagonal, the player wins the PRIZE shown. If the player reveals three "3" symbols in any one row, column or diagonal, the player wins TRIPLE the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be only one occurrence of three "3" (tripler) play symbols appearing in a row, column or diagonal on winning tickets as dictated by the prize structure.

C. There will be only one occurrence of three clover, three horseshoe or three star play symbols appearing in a row, column or diagonal on winning tickets as dictated by the prize structure.

D. Every ticket will contain at least two "3" (tripler) play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "3'S A CHARM" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $6.00, $9.00, $10.00, $15.00, $20.00, $30.00, $60.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas

Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $30.00, $60.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "3'S A CHARM" Instant Game prize of $1,000, 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 "3'S A CHARM" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "3'S A CHARM" 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 "3'S A CHARM" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 tickets in the Instant Game No. 1137. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1137 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	956,800	11.54
$2	1,030,400	10.71
$3	239,200	46.15
$5	73,600	150.00
$6	55,200	200.00
$9	36,800	300.00
$10	36,800	300.00
$15	36,800	300.00
$20	18,400	600.00
$30	4,278	2,580.65
$60	2,300	4,800.00
$100	690	16,000.00
$300	322	34,285.71
$1,000	138	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1137 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. 1137, 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-200805944

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: November 14, 2008

Instant Game Number 1161 "Cash to Go"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1161 is "CASH TO GO". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1161 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1161.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, GO SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1161 - 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
GO SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00 and $100.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1161), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1161-0000001-001.

K. Pack - A pack of "CASH TO GO" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH TO GO" Instant Game No. 1161 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 Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH TO GO" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If the player reveals a "GO" play symbol, the player wins the PRIZE shown for that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The "GO" (auto win) play symbol will never appear more than once on a ticket.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH TO GO" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH TO GO" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the

event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH TO GO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH TO GO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CASH TO GO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1161. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1161 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	489,600	16.67
$2	816,000	10.00
$4	204,000	40.00
$5	54,400	150.00
$10	54,400	150.00
$20	23,800	342.86
$40	13,260	615.38
$100	680	12,000.00
$1,000	68	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.93. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1161 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. 1161, 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-200806055
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 19, 2008

Instant Game Number 1163 "Blazing 8's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1163 is "BLAZING 8'S". The play style is "key number match with 8 multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1163 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1163.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 8X SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1163 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
19	NTN
20	TWY
8X SYMBOL	8XWIN
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1163), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1163-0000001-001.

K. Pack - A pack of "BLAZING 8'S" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLAZING 8'S" Instant Game No. 1163 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 "BLAZING 8'S" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals an "8X" play symbol, the player wins 8 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "8X" (8 times multiplier) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLAZING 8'S" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLAZING 8'S" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLAZING 8'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BLAZING 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BLAZING 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game No. 1163. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1163 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	684,000	13.16
$4	720,000	12.50
$5	144,000	62.50
$10	234,000	38.46
$20	108,000	83.33
$50	21,375	421.05
$100	3,075	2,926.83
$500	750	12,000.00
$1,000	300	30,000.00
$20,000	9	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1163 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. 1163, 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 14, 2008

Instant Game Number 1165 "Easy 10's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1165 is "EASY 10'S". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1165 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1165.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $200 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1165 - 1.2D

PLAY SYMBOL	CAPTION
10	WIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWO HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $200.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1165), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1165-0000001-001.

K. Pack - A pack of "EASY 10'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "EASY 10'S" Instant Game No. 1165 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 "EASY 10'S" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a "10" play symbol in the play area, the player wins the PRIZE shown below it. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning play symbols on a ticket.

D. Non-winning prize symbols will never be the same as a winning prize symbol(s).

E. Non-winning play symbols will never appear with the same prize symbol (i.e. 5 and $5).

F. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "EASY 10'S" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $30.00, $60.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "EASY 10'S" Instant Game prize of $1,000, 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 "EASY 10'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "EASY 10'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 "EASY 10'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1165. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1165 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	652,800	12.50
$2	761,600	10.71
$3	81,600	100.00
$4	54,400	150.00
$5	54,400	150.00
$6	54,400	150.00
$10	27,200	300.00
$20	27,200	300.00
$30	5,440	1,500.00
$60	3,740	2,181.82
$100	1,020	8,000.00
$200	918	8,888.89
$1,000	170	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1165 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. 1165, 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 14, 2008

Instant Game Number 1166 "Summer Spectacular"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1166 is "SUMMER SPECTACULAR". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1166 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1166.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, SUN SYMBOL, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $2,500 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1166 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
SUN SYMBOL	SUN
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND

$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,500 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1166), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1166-0000001-001.

K Pack - A pack of "SUMMER SPECTACULAR" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUMMER SPECTACULAR" Instant Game No. 1166 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 "SUMMER SPECTACULAR" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "sun" play symbol, the player wins the PRIZE shown for that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "SUN" (auto win) play symbol will only appear once on a ticket.

C. No more than four (4) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUMMER SPECTACULAR" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUMMER SPECTACULAR" Instant Game prize of $1,000, $2,500 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUMMER SPECTACULAR" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SUMMER SPECTACULAR" 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 "SUMMER SPECTACULAR" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1166. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1166 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	652,800	6.25
$20	408,000	10.00
$50	81,600	50.00
$100	58,718	69.48
$200	8,840	461.54
$500	2,686	1,518.99
$1,000	238	17,142.86
$2,500	68	60,000.00
$100,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1166 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. 1166, 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-200806015
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 18, 2008

Instant Game Number 1167 "Dollar Signs"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1167 is "DOLLAR IGN". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1167 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 1167.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 3X SYMBOL, $3.00, $6.00, $9.00, $10.00, $15.00, $18.00, $30.00, $60.00, $90.00, $300, $3,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1167 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
3X SYMBOL	WINX3
$3.00	THREE$
$6.00	SIX$
$9.00	NINE$
$10.00	TEN$
$15.00	FIFTN
$18.00	EGHTN

$30.00	THIRTY
$60.00	SIXTY
$90.00	NINTY
$300	THR HUND
$3,000	THR THOU
$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $3.00, $6.00, $9.00, $15.00 or $18.00.

G. Mid-Tier Prize - A prize of $30.00, $60.00, $90.00 or $300.

H. High-Tier Prize - A prize of $3,000 or $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1167), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1167-0000001-001.

K. Pack - A pack of "DOLLAR IGN" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125 Configuration B will show the back of ticket 001 and the front of ticket 125.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOLLAR IGN" Instant Game No. 1167 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 "DOLLAR IGN" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any DOLLAR NUMBER to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a "3X" symbol, the player wins 3 TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "3X" (tripler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No three or more matching non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning DOLLAR NUMBER play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the DOLLAR NUMBER play symbol (i.e. 6 and $6).

H. The top prize will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOLLAR IGN" Instant Game prize of $3.00, $6.00, $9.00, $15.00, $18.00, $30.00, $60.00, $90.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $30.00, $60.00, $90.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOLLAR IGN" Instant Game prize of $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOLLAR IGN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DOLLAR IGN" 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 "DOLLAR IGN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1167. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1167 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	480,000	12.50
$6	720,000	8.33
$9	108,000	55.56
$15	36,000	166.67
$18	60,000	100.00
$30	40,000	150.00
$60	20,000	300.00
$90	6,000	1,000.00
$300	1,200	5,000.00
$3,000	16	375,000.00
$30,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.08. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1167 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. 1167, 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-200806016
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 18, 2008

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Office of Public Utility Counsel

Notice of Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007) (PURA), the Office of Public Utility Counsel (Office) is conducting its annual public hearing.

The public hearing will be held on the date and time, and at the location indicated below.

Wednesday, December 10, 2008, from 2:00 p.m. - 3:00 p.m.

Workforce Solutions

3406 West Alberta

Edinburg, Texas 78539

All interested persons are invited to attend and provide input.

The Office represents the interest of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, courts, and other federal regulatory bodies. The Office seeks public input to assist the office in developing a plan of priorities, and in receiving comments on the office's functions and effectiveness.

Contact Carin Nersesian, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 for further information.

TRD-200805923
Don Ballard
Public Counsel
Office of Public Utility Counsel
Filed: November 13, 2008

♦ ♦ ♦

Texas Public Finance Authority

Notice of Request for Proposals

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Texas Public Finance Authority announces its Request for Proposal to obtain executive search services to assist the Board of Directors in selecting an Executive Director. A copy of the RFP is available on the Authority's website, at www.tpfa.state.tx.us/RFPs and on the Electronic State Bulletin Board at: http://esbd.cpa.state.tx.us. Interested firms may also contact the agency directly by email at: judith.porras@tpfa.state.tx.us.

The Board will base its selection on a firm's demonstrated competence, knowledge, and qualifications and the reasonableness of its proposed fee.

Proposals must be submitted by 5:00 p.m., December 1, 2008.

TRD-200805943
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: November 14, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 12, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC to Amend a State-Issued Certificate of Franchise Authority, Project Number 36388 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipality of Clear Lake Shores, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36388.

TRD-200806021
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 14, 2008, Qwest Communications Corporation filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60367. Applicant intends to reflect a change in corporate restructuring and a name change.

The Application: Application of Qwest Communications Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36397.

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 3, 2008. 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 36397.

TRD-200806024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

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Notice of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on November 13, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures LLC to Amend a State-Issued Certificate of Franchise Authority, Project Number 36391 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipal boundaries of the City of Kaufman, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36391.

TRD-200806025
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On November 10, 2008, WilTel Local Network, LLC 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 60346. Applicant intends to relinquish its certificate.

The Application: Application of WilTel Local Network, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 36370.

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 3, 2008. 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 36370.

TRD-200805948
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2008

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 13, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one growth block in the Lewisville rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 36393.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 3, 2008. 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 36393.

TRD-200806022
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On November 14, 2008, VCI Company 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 60729. Applicant intends to relinquish its certificate.

The Application: Application of VCI Company to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 36396.

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 3, 2008. 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 36396.

TRD-200806023
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

Public Notice of Workshop on Policy Relating to Potential Excess Development in Competitive Renewable Energy Zones in the ERCOT Market

The staff of the Public Utility Commission of Texas (commission staff) will hold a workshop regarding dispatch priority options for CREZ developers and potential excess wind resources in the ERCOT Market on Friday, December 12, 2008, from 9:30 a.m. to 3:30 p.m. in Conference Room 100-1, located on the 1st floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Project Number 34577, *Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones* has been established for this proceeding. The commission staff wishes to further discuss the previously filed written responses to the questions it issued on August 15, 2008, and corrected questions it issued on August 18, 2008.

Several market participants who filed responses to the questions submitted by staff suggested that a workshop was necessary to discuss in details and bring more clarity to the issues raised by the staff's questions. The commission staff invites interested persons to submit proposed agenda items for the workshop. Proposed agenda items should be sent via e-mail to: Danielle.jaussaud@puc.state.tx.us.

Questions concerning the workshop or this notice should be referred to Danielle Jaussaud, Director of Wholesale Market Analysis, Competitive Markets Division, Public Utility Commission of Texas at (512) 936-7396. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200806051
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2008

Request for Proposals for a Cost-Benefit Analysis of the Deployment of Utility Infrastructure Upgrades and Storm Hardening Programs

The Public Utility Commission of Texas (PUCT or Commission) is issuing a Request for Proposals (RFP) for an entity to provide a cost-benefit analysis of the recommendations in the Final Staff Report (Project No. 32182, Item No. 93), PUC Investigation of Methods to Improve Electric and Telecommunications Infrastructure to Minimize Long Term Outages and Restoration Costs Associated with Gulf Coast

Hurricanes. Proposers must file their sealed proposals in Project No. 36375 at PUCT Central Records before 5:00 p.m., Friday, December 12, 2008.

The contract awardee will evaluate data from electric and telecommunications utilities related to hurricanes and tropical storms impacting the Texas coast within the last ten years to assess infrastructure damage caused by wind, trees/flying debris, inland flooding, and storm surge and the associated restoration costs. The analysis shall include an evaluation of the cost to electric utilities of implementing annual vegetation management programs and ground-based pole inspection programs throughout the State of Texas.

Another component of the analysis is an evaluation of the costs and benefits of implementing certain requirements in hurricane-prone areas (within 50 miles of the coast), including construction of electric substations and telecommunications central offices above the 100-year floodplain, providing adequate back-up power for central offices and substations, construction of transmission lines to meet current National Electric Safety Code (NESC) wind-loading standards, and building underground transmission and distribution lines. The contract awardee will also determine the societal costs associated with lost productivity during an extended power outage and the benefits associated with shorter restoration times.

RFP documentation may be obtained by contacting Chris Wood:

Chris Wood, Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, Texas 78711-3326

(512) 936-7069

chris.wood@puc.state.tx.us

RFP documentation also is located on the PUCT website at http://www.puc.state.tx.us/about/procurement/currentrfps.cfm.

TRD-200805910
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2008

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The University of Texas System

Request for Applications Concerning the Mid-Career Teacher Recruitment Planning Grant Program, 2009

Texas Regional Collaboratives (TRC) for Excellence in Science and Mathematics Teaching

Filing Authority. The availability of grant funds is authorized by the No Child Left Behind Act of 2001, Title II, Part B - Mathematics and Science Partnerships and the General Appropriations Act, Article III, Rider 40, 80th Texas Legislature, 2007.

Eligible Applicants. The TRC is requesting applications from partnerships that must include an engineering, mathematics, or science department of an institution of higher education (IHE) and a high-need local educational agency (LEA). They may also include another engineering, mathematics, science, or teacher training department of an IHE; additional LEAs, public charter schools, public or private elementary schools or secondary schools, or a consortium of such schools; a business; or a nonprofit or for-profit organization of demonstrated effectiveness in improving the quality of mathematics and science teachers. Applicants must be an existing program with an established track record of successful recruiting, training, placing and mentoring career-change teachers into high need school districts.

Description. The purpose of this notice is to solicit planning grant applications from eligible applicants to expand existing programs that recruit professionals with math, science, or technology degrees to become teachers in Texas schools. The initial grant period supports planning to develop program activities that shall assist the career-change teacher from program initiation through obtaining appropriate teaching certification and continued mentoring to endure ongoing success in the classroom.

Dates of Project. Applicants should plan for a starting date of no earlier than May 1, 2009, and an ending date of no later than July 31, 2010.

Project Amounts. An estimated $283,678 in funding is available for the Mid-Career Teacher Recruitment Planning Grant Program for the 2009 grant period. Funding will go to support one to three planning grants.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the Request for Applications (RFA). Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TRC reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TRC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TRC to pay any costs before an application is approved. The issuance of this RFA does not obligate TRC to award a grant or pay any costs incurred in preparing a response.

Further Information. For clarifying information about the RFA, please visit the TRC website at www.thetrc.org or contact Amy Werst at (512) 471-7450.

Deadline for Receipt of Applications. Applications must be received in the TRC by 4:30 p.m. (Central Time), Thursday, January 15, 2009 to be eligible to be considered for funding.

TRD-200805949
James P. Barufaldi
Director, Center for Science and Mathematics Education
The University of Texas System
Filed: November 17, 2008

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Texas Water Development Board

Request for Statements of Qualifications

Water Research Study Priority Topics

The Texas Water Development Board (board) requests the submission of Statements of Qualifications (SOQs) from interested applicants leading to the possible award of contracts for state fiscal year 2009 to conduct water research on five priority topics. The total amount of the grants awarded by the board shall not exceed $600,000 from the Research and Planning Fund. Rules governing the Research and Planning Fund (31 Texas Administrative Code Chapter 355) are available upon request from the board, or may be found at the Secretary of State's Internet address: *http://www.sos.state.tx.us/tac/*; then sequentially select, "TAC Viewer," "Title 31," "Part 10," "Chapter 355," and "Subchapter A." Guidelines for responding to the SOQ, which include an application

form and detailed information on the research topic, will be available at the board's website at: *http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp*, or will be provided upon request.

Description of the Research Objectives and Purpose

Statements of Qualifications are requested for the following five priority research topics.

1. Advancing Water Reuse in Texas

Water reuse is a recommended water management strategy in 14 of the 16 2006 regional water plans. The 2007 State Water Plan reports that water reuse will account for 1.3 million acre-feet per year of new supplies by 2060.

In the recent past, water rights issues have dominated the water reuse discussion in Texas. However, there is a growing recognition among key stakeholders that, to achieve the expected supply goals for water reuse strategies, there is an even greater need to develop and implement a common agenda focusing on the science, technology and public awareness aspects of water reuse.

A foundational aspect for a Texas Water Reuse agenda will be researching and documenting the history and achievements of the water reuse industry in Texas, as well as examining the current state of existing and proposed water reuse supplies in Texas.

The study shall also discuss the state of the water reuse technology; identify and discuss exemplary cases of water reuse programs; identify technological, regulatory and financial challenges to implementing water reuse projects in Texas; and discuss available resources and opportunities for partnerships to support and implement needed research on water reuse.

A key component of this study will be a process to solicit and incorporate information from local and national authorities on the science, technology and implementation of water reuse programs and projects.

The outcome of this study will serve to prioritize and guide the specific areas of needed research appropriate for the state to integrate into existing research programs, and implementation of water reuse in Texas.

2. Assessment of Global Climate Models for Water Resources Planning Applications

There are at least 17 publicly available Global Climate Models (GCM) available for water resources studies. The models may perform well when considered on a global scale, but when analyzed at the watershed scale may not adequately represent the observed climate in that region. Statistical downscaling is a process whereby local meteorological observations are used to improve the spatial resolution of GCM outputs. The process usually involves adjusting the GCM output such that the statistics of the modeled data match observations for the overlapping period of record. A further advantage to the statistical downscaling process is that you end up with a dataset appropriate for water resources studies on the watershed or aquifer scale.

Water planners need to know which GCMs perform best in Texas. They also need an assessment of the uncertainty in the GCM climate projections for this state. The first question could be answered by determining how much each GCM needs to be adjusted in the downscaling process described above. Obviously, the ones that need the least adjustment are already performing well in this part of the world and would probably provide more reliable climate predictions. The second question can be answered by looking at the range in the projections of the GCMs for Texas - a large range indicating that there remains significant uncertainty in future climate, a narrow range meaning that the climate models are generally in agreement on a future trend.

The researcher chosen should also provide a description of the downscaling techniques available and a recommendation on the appropriateness of statistically downscaled GCMs versus dynamically downscaled GCMs for hydrological studies in Texas.

3. Water Use in the Texas Mining and Oil and Gas Industry

Mining companies in Texas extract a range of resources including oil and natural gas, aggregates (crushed stone, gravel and sand), lignite and coal, clay, marble, limestone, gypsum, granite and uranium. The mining industry in Texas is critical to the state's and the nation's economy. For example on a national basis, Texas is the fourth largest producer of clay and aggregates, the fifth largest producer of coal, and Texas is the nation's leading producer of crude oil (excluding Federal offshore areas). More than one-fourth of total U.S. natural gas production occurs in Texas, making it the nation's leading natural gas producer. In recent years, extraction of natural gas and oil and other commodities in Texas has risen considerably in response to record markets prices for fuel and minerals.

The availability of adequate water is critical to many mining sectors. Water is often used to not only extract mineral resources but also to process materials on-site. As the state's lead agency for water planning and collection and dissemination of water related data, the Texas Water Development Board is requesting statements of qualifications for research that will analyze mining water use throughout the state. The selected research team should:

(1) identify major mining operations in Texas including onshore oil and gas well fields (including secondary and tertiary recovery methods), aggregates, coal and lignite, industrial sand, uranium and other major non-fuel minerals;

(2) analyze how and why different types of mining operations rely on water using what type of technology;

(3) estimate the amounts of water they "use," characterizing use as either water as withdrawals, diversions, make-up water, discharges, dewatering and consumptive use; and identify the source and nature (i.e., fresh, saline or salt) of water for each operation;

(4) develop a baseline current estimate of water use for each county in the state, for each regional water planning area and for the state as a whole;

(5) develop long-term (50 year) water demand projections on a county level for each major category of mining resources considering factors such as population and economic growth, trends in market demand and prices, changes in technology and expectations regarding the amounts of recoverable reserves in a given location; and

(6) prepare and submit draft and final reports along with copies of electronic databases of information gathered during the study for review and supporting GIS data.

The selected research team should solicit industry experts through trade organizations or other means to serve as steering committee members and reviewers of draft findings of the study.

4. Characterizing Past Climatic Conditions Using Tree Rings

The thicknesses of tree rings captures past climatic conditions and can be correlated to precipitation and even stream flow. Because trees are hundreds of years old, their rings capture climatic conditions much farther back in time than recorded conditions or measured conditions, which generally only reach 100 years into the past. Understanding past climatic conditions allows us to put the drought of the 1950s into perspective and to better understand historic climatic variability. The purpose of this project is to: (1) summarize existing tree ring data for Texas and what that data suggests about drought; (2) extend, where appropri-

ate and possible, tree ring information in a part or parts of the state; and (3) recommend future tree ring work in Texas. The goal of the project is to characterize past climatic variability and to place the drought of the 1950s into context with a longer historical period.

We expect applications to: (1) demonstrate the applicant's experience and capabilities with dendrochronology; and (2) propose a work plan to extend current tree ring chronology.

5. An Assessment of Aquifer Storage and Recovery in Texas

In 1995 the Texas Legislature passed House Bill 1989 which recognized Aquifer Storage and Recovery (ASR) as a beneficial use of water which, among other attributes, enhances conservation, reduces environmental impacts, and protects groundwater resources. ASR involves injecting or infiltrating water into an aquifer and then pumping it out when it is needed. For example, the City of Kerrville treats and injects excess water from the Guadalupe River into the Trinity Aquifer for later extraction in peak demand times. San Antonio Water System banks excess water from the Edwards Aquifer in the Carrizo-Wilcox Aquifer for extraction during droughts.

Given the obvious benefits of ASR, it is surprising that ASR is not used more in Texas. The purpose of this research is to: (1) review past ASR studies (a number of which were supported by the state); (2) summarize the results of these studies and discuss why the project was not implemented; and (3) recommend policy changes or technical studies that might encourage ASR implementation in the future. The final report needs to thoroughly discuss any policy, legal, and technical issues that hamper the implementation of ASR in Texas. This research will focus on how obstacles to ASR projects can be overcome in order to pave the way to a more extensive use of ASR throughout the state.

Description of Applicant Criteria

The applicant should: (1) demonstrate prior experience in the priority research topic; (2) be able to review, research, analyze, evaluate, and interpret data and research findings; and (3) have excellent oral presentation and writing abilities. An estimate of the total cost and a basic budget for the study is requested. This estimate is to be used by the board for an indication of total grant funding requested, will not be considered as a bid for the study, and will not be used in the evaluation process when selecting applications for consideration of approval for the research proposed. The board reserves the right to not accept any or all submissions based on availability of funding and its evaluation of the qualifications as submitted.

If the applicant is short-listed, the applicant should be prepared to make an oral presentation to board staff. The scope of work, schedule, and contract amount will be negotiated after the board selects the most qualified applicant. Failure to reach a negotiated contract may result in subsequent negotiations with the next most-qualified applicant; however, a negotiation will not occur with applicants who are determined by the board to be unqualified or otherwise unsuited to perform the requested research. Applicants selected to conduct the research may be required to present the results of their research at one or more of the board's monthly public meetings.

Deadline for Submittal, Review Criteria and Contact Person for Additional Information

Historically Underutilized Businesses (HUBs) are encouraged to submit Statements of Qualifications and/or participate as subcontractors in the water research program. As instructed in the Texas Government Code §2161.252 and 34 Texas Administrative Code §20.14, if the anticipated cost of the study is to exceed $100,000, the applicant must complete a HUB Subcontracting Plan according to: *http://www.window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/*

All applicants must obtain the board's guidelines for responding to the Statements of Qualifications. The guidelines are available at: *http://www.twdb.state.tx.us/publications/requestforproposals/requestforproposals_index.asp.*

Ten double-sided, double-spaced copies of a completed Statements of Qualifications must be filed with the board prior to 12:00 p.m., Tuesday, January 13, 2009. Respondents to this request shall limit their Statement of Qualifications to the size previously mentioned, excluding the resumes of the project team members.

Statements of Qualifications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 535, 1700 North Congress Avenue, Austin, Texas 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Requests for information and questions relating to the Statements of Qualifications should be directed by e-mail to *david.carter@twdb.state.tx.us.*

TRD-200805942
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: November 14, 2008

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (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 Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. 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).